/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg* New York.

LEADER V. FACEBOOK PRESS BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)

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/// Haughtiness in

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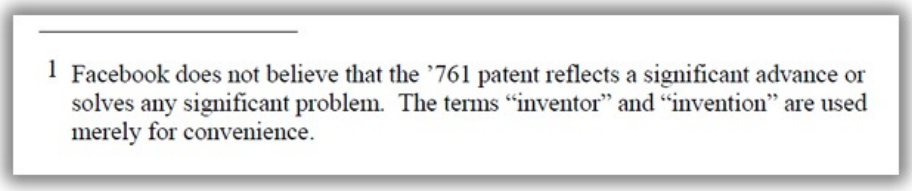
/// Haughtiness in the face of "literal infringement"

"**Haughtiness:** an exaggerated sense of one's importance that shows itself in the making of excessive or unjustified claims." ("Haughtiness." Merriam-Webster.com. 2012.)

In the face of a "*"literal infringement*" verdict against them on 11 of 11 Leader claims and no published prior art, Facebook states in their first footnote on page 4 of their appeal reply brief that they don't think that the technology that Leader invented is anything special. Such haughty statements may come back to haunt them.

Read On.

> "Facebook does not believe that the '761 patent reflects a significant advance or solves any significant problem. The terms 'inventor' and 'invention' are used merely for convenience." Facebook Red Brief, fn. 1.



1 Facebook does not believe that the '761 patent reflects a significant advance or solves any significant problem. The terms "inventor" and "invention" are used merely for convenience.

Fig. 1 – Facebook Red Brief Footnote 1, pg. 4. *Leader v. Facebook* appeal before the United States Court of Appeals for the Federal Circuit.

This comment belies the verdict against them of "literal infringement" of 11 of 11 claims in *Leader Technologies, Inc. v. Facebook, Inc.*, 08-862-JJF-LPS (D.Del. 2008). In other words, the engine running the Facebook website *is* Leader's invention. See U.S. Patent No. 7,139,761; Fed. Cir. Case No. 2011-1366. So when Facebook says that that the patent doesn't reflect any "significant advance," I guess they are inferring that their technology isn't anything special, either? 😃

700+ Facebook patents and patent applications disclosed in the S-1

Currently there are 700+ patents and patent applications waiting for approval at the USPTO and in patent offices in other countries. All this Facebook activity to protect its intellectual property contradicts their self-confessed "hacker culture" and their disrespect for the privacy and property rights of others—as exposed by the recent Federal Trade Commission sanction of Facebook for deceptive

the face of "literal infringement"
/// Facebook *ordered* pharma users to allow comments, yet will not return phone calls now
/// First thoughts after leaving courthouse March 5, 2012
/// Judges Selected
/// San Francisco CBS-TV KPIX Coverage
/// NBC-TV4 (Columbus) Interview with Leader founder Michael McKibben
/// How Facebook tricked the jury – *YouTube*
/// New friends?
/// Did Someone Prod the Media?
/// Facebook: The New 'Too Big To Fail?'

March 2012

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privacy practices and Mark Zuckerberg's vacuous mea culpa. *See* Achohido, Byron. "Facebook settles with FTC over deception charges." *USA Today*, Dec. 2, 2011. Last accessed Dec. 3, 2011.

Mark Zuckerberg stated:

> "one good hacker can be as good as 10 or 20 engineers."
>
> *Wired*, Apr. 19, 2010;
> *Hollywood Reporter*, Jun. 28, 2011.

Facebook sends mixed messages regarding intellectual property. On the one hand, they admit hacking ideas at a feverish pace, and on the other, they are filing patent applications with abandon. *See* U.S. Patent Nos. 7,669,123; 7,725,492; 7,788,260; 7,797,256; 7,809,805; 7,827,208; 7,827,265; 7,890,501; 7,933,810; 7,945,653; 7,970,657; 8,010,458; 8,027,943; 8,037,093; U.S. Patent App. Nos. US 2011/0264736 A1; US 2011/0231747 A1; US 2011/0225481 A1; US 2011/0202531 A1; US 2011/0202822 A1; US 2011/0087526 A1; US 2011/0029388 A1; US 2011/0004831 A1; US 2010/0199192 A1; US 2010/0146443 A1; US 2009/0182589 A1; US 2009/0119167 A1; US 2009/0037277 A1; US 2008/0091723 A1; US 2008/0046976 A1; US 2008/0040474 A1; US 2008/0040673 A1; US 2008/0033739 A1; US 2007/0214141 A1; US 2007/0192299 A1; US 2004/0230672 A1; PRC 101849229 A; PRC 101495991; PRC 101366029; EP 2210185 A1; EP 1971911 A2; EP 1964003 A2; EP 1682089 A2; CA 2704680 A1; CA 2703851 A1; CA 2660539 A1; CA 2660459 A1; CA 2634961 A1; CA 2634928 A1; CA 2633512 A1; CN 101495991; CN 101366029; CN 101849229 A. *See* "Mark Zuckerberg's Patents," *ip.com*. Last accessed Dec. 3, 2011; *See also* "Inequitable Conduct."

It doesn't stop there.

When I first noticed the footnote comment in FB's Red Brief, I thought it was merely an arrogant statement, but now with the revelations about Fenwick & West LLP's *intimate* involvement in their 700+ patent portfolio, it comes into focus. Because Fenwick did not disclose Leader's U.S. Patent No. 7,139,761 as "prior art" in ANY of their 700+ patents and patents pending, they opened Facebook up to serious claims of "inequitable conduct" for failing to disclose Leader's prior art to the US Patent Office (they had this legal duty no matter whether or not Leader had a patent lawsuit against them . . . it's just the law on disclosure during patent prosecution). Basically, it is your duty to tell the Patent Office about your full knowledge of the landscape in and around the novelty for which you are seeking a patent.

Did Fenwick reason that they needed this footnote in the brief in order to try and wiggle away from a lack of disclosure of Leader's technology? Technology that they would have prima facie knowledge as Leader's corporate counsel in 2002.

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Three Strikes

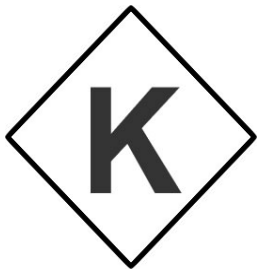

Fig. 2 – Baseball scorecard "K" notation for a batter strike out.

1. Not specifically disclosing Leader's U.S. Patent No. 7,139,761 and the *Leader v. Facebook* litigation is reckless enough. That's strike one.
2. Strike two is the fact that Fenwick was Leader's corporate attorney in 2002 (See link.) and Fenwick had **KNOWLEDGE** of Leader's '761 technology. Therefore, this lack of disclosure could be considered "willful."
3. Strike three is the fact that Fenwick chose not to disclose the "inequitable conduct" risk specifically related to the "Intellectual Property" portfolio described on p. 92 of Facebook's S-1 disclosure. It appears to me (one must review each of their 700+ filings to be sure) that the entire portfolio could be at risk of "inequitable conduct."

Here are the components of several of the patents listed above that may qualify for "inequitable conduct" as an example (thank you to my patent litigator source):

U.S. Patent No. 7,669,123 Zuckerberg et al issued Feb. 23, 2010:

1. Relies on a tracking component which is one of the novelties of Leader's U.S. Patent No. 7,139,761;
2. Does not disclosure U.S. Patent No. 7,139,761 McKibben et al Nov. 21, 2006 as prior art; and
3. Was prosecuted by Fenwick & West LLP

U.S. Patent. No. 7,827,265 Cheever et al (Assignee: Facebook) Nov. 2, 2010:

1. It fails to disclose U.S. Patent No. 7,139,761 McKibben et al Nov. 21, 2006 as prior art;
2. Fenwick & West LLP is the prosecutor; and
3. Claim 1 claims a "profile in a computer memory" related to an "organization" ('761: context component & storage component), and "established a connection" ('761: tracking component), and "updating the profile" ('761: wherein the user accesses data from the second context).

U.S. Patent No. 7,827,208 Bosworth et al (Assignee: Facebook) Nov. 2, 2010:

1. It fails to disclose U.S. Patent No. 7,139,761 McKibben et al Nov. 21, 2006 as prior art;
2. Fenwick & West LLP is the prosecutor; and
3. It is describing the association of metadata with the user and the data as users interact between contexts. This writes on the novelty of '761.

U.S. Patent No. 7,725,492 Sittig & Zuckerberg May 25, 2010:

1. It does not disclose U.S. Patent No. 7,139,761

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McKibben et al Nov. 21, 2006 as prior art;
2. Fenwick & West LLP is the prosecutor; and
3. It discloses a "social relationship editor" that tracks user movement and activity as the user moves between contexts. Leader's '761 patent clearly predates these claims. It is claiming a novelty that is not Zuckerberg's to claim.

U.S. Patent No. 7,797,256 Zuckerberg et al Sep. 14, 2010:

1. It does not disclose U.S. Patent No. 7,139,761 McKibben et al Nov. 21, 2006 as prior art;
2. Fenwick & West LLP is the prosecutor; and
3. It discloses a tracking component in at least Claim 1. It also discloses a storage component as well as a "flyer component' which could be analogous to the '761 context component.

To name a few . . .

Lastly, the Piece de Resistance:

I FINALLY have a response from the SEC regarding the lack of disclosure of this case in Facebook's S-1 filing.

> "Thank you for contacting the U.S. Securities and Exchange Commission.
>
> Item 103 of Regulation S-K (http://taft.law.uc.edu/CCL/regS-K/SK103.html) sets out the legal proceedings disclosure requirements. In general, an SEC filer must disclose legal proceedings that:
> 1. are other than ordinary routine litigation 2. claims that exceed 10% of the current assets of the issuer
>
> Please note that I provide this website as a reference for you. The SEC does not endorse this website, it's sponsor, or any of the policies, activities, products, or services offered on the site or by any advertiser on the site.
>
> Please let me know if we may be of further assistance.
>
> Sincerely,
>
> Leslie M. Garner
> Attorney
> Office of Investor Education and Advocacy
> U.S. Securities and Exchange Commission
> (800) 732-0330
> www.sec.gov"

SERIOUSLY???!!!???

There is more disclaimer protecting the SEC from advertisers on the Taft site than input into a billion dollar Federal case!

C'MON NOW, PEOPLE!!

Let's look at the two points:

1. Since when was a Federal Circuit trial "routine litigation?"
2. Damages in an infringement case can be anywhere from 5 – 25% of gross revenues for the life of the patent. (See this link.*) In the *Leader v. Facebook* case

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it could be gross revenues generated by Facebook from 2006 through 2021.

* P.S. I don't "endorse this website, it's sponsor, or any of the policies, activities, products, or services offered on this site or by any advertiser on the site" either. 😀

No wonder we have so many cases like Madoff and Enron slipping through the cracks at the SEC. (Give Leslie Garner a call if you like.)

Stay tuned!

Posted by Donna Kline on Friday, March 9, 2012, at 4:01 pm.
Filed under Investigation.
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