/// Donna Kline Now!

By Donna Kline — www.DLKindustries.com

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{ 2012 06 07 }

/// Leader filed petition for rehearing today

The Federal Circuit is being asked to fix their misapprehension of the evidence

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BY DONNA KLINE | June 7, 2012 | *PITTSBURGH BUSINESS REPORT (PBR)*

UPDATED Jun. 23, 2012 – Senate Judiciary Committee Contact List

June 7, 2012 – Leader Technologies filed a Petition for Rehearing of *Leader Tech v. Facebook*, Case No. 2011-1366 (3.5 MB) before the United States Court of Appeals for the Federal Circuit in Washington, D.C. Here's Leader's Press Release on the matter.

The definition of the word 'is'

This case boils down to Facebook's tampering with the definition of the word 'is.' During the original trial (*Leader Technologies, Inc., v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Del 2008)) Facebook managed to convince the jury that the use of the word "is" can also be used to describe something that occurred in the *past*. When clearly, the word "is" describes the *present* condition.

President Clinton used the definition of 'is' as a pivotal point in his Monica Lewinsky trial

This isn't the first time that the definition of "is" has been pivotal in a legal matter. Remember President William J. Clinton? Didn't he stand trial for perjury not too long ago? Here's the Testimony Transcript of The Office of Independent Counsel on September 9, 1998, Tr. 510:5.

On page 509 of the transcript, the attorney references an affidavit from Monica Lewinsky that states "there *is* absolutely no sex of any kind in any manner, shape or form, with President Clinton."

Our crafty former President, when asked if the statement was false calmly replied, "It depends on what the meaning of the word 'is' is." He continues, "if 'is' means is and never *has* been, that is one thing. If it means there *is* none, that was a completely true statement." (See page 510 beginning at line 5.) Correct, Mr. Clinton, "is" describes the current situation, not what may (or may not) have occurred in the past.

The Justice System in Facebook's World? Source: New Yorker.

The precedents set in this case are of "exceptional importance"

Nothing short of the future of American innovation may be at risk here. Laymen (Goldman Sach:

"Muppets") often don't appreciate the impact of court decisions on their daily lives. However, if mistakes are made in this case, innovation will take a serious blow from which it would take decades to recover. Our economy may not be able to withstand such an assault on the American inventor. In my opinion, hucksters are attempting to take over using run-of-the-mill theft and bribery—age-old tactics, this time in Harvard loafers and hoodies. Our veterans in Pittsburgh reminded us again just last week that "freedom is not free."

Inventor McKibben did it by the book; but is that enough in our anti-patent courts?

This is a story of a true American entrepreneur and inventor, Michael McKibben, who had the idea for what we now call "social networking" more than a decade ago. He attacked the business problems by the book. He consulted some of the world's foremost experts in intellectual property (incl. consultants to the Executive, Judiciary, Congress, Academia and industry on trade secrets, security and patenting), he invited those people onto his board, and he followed their advice. In 2002 he filed for patents since it was still early days for his idea. Bottom line, he did not do any of the things Facebook has accused him of with regard to alleged early selling.

Backward Justice

However, instead of the courts standing behind the inventor in this case, they have stood behind the infringer Facebook. Instead of forcing Facebook to prove with hard evidence that McKibben allegedly offered the invention for sale, the court has criticized McKibben for not volunteering more evidence to prove that he did not try to sell it. The court is forcing Leader to prove that it did *not* do something rather than focusing on Facebook's burden to *prove* their case. This is backward justice, I believe.

Facebook stole Leader's technology

Remember, the issue here is not whether or not Facebook is using Leader's property. They are. **Facebook was found guilty on 11 of 11 counts of infringing Leader's patent.** That fact will not change. The issue in this petition is whether or not Facebook proved by "clear and convincing evidence" (or any evidence for that matter!) that Leader had tried to sell its invention more than one year before they filed the patent. Leader says that would have been impossible since it was not ready until days before the filing, and even then it was only on one developer's computer for three more weeks after that.

Trying again; well-settled legal issues were not addressed by this court the first time around

The hard evidence proves Leader's case, so why didn't the court overturn the jury? Leader's petition says they "misapprehended the evidence." This is being very, very nice. I attended the hearing, Judge Kimberly Moore and I made eye contact and I saw nothing in her body language that indicated to me that she didn't understand the legal issues. I walked out of there *quite certain* Leader would win. Then, the "opinion" came out affirming the lower court's decision. Numerous patent experts called the write-up a "white wash," followed by some unrepeatable expression of disgust at the complete absence of a *real* opinion about the serious matters of patent law involved in this case. Judge's Moore's opinions, a former patent law professor, were totally absent. This didn't smell right even to this layperson. Then add that this opinion was posted within hours of the beginning of the Facebook IPO road show and I heard even William Shakespeare say from his grave, "Something stinketh."

Whimsy Rules

In Justice According to Facebook, Whimsy Rules! What about the Rules of Civil Procedure? Bwahahahahahah! Those Rules are for the muppets, not us!

Here's the future of patents if Facebook prevails:

1. Attorneys, judges and juries can ask trick questions using present tense verbs, then blindside that witness with an application of that answer to some time in the past. Whimsy will rule.
2. Mere references to brand names in sales documents can substituted for hard evidence, eliminating the need for an infringer to actually prove on sale bar. Whimsy will rule.
3. Courts can dispense with well-settled precedent re. the need to apply contract law to assess alleged offers and can simply use personal opinion. Whimsy will rule.
4. Nondisclosure agreements will no longer protect the secrecy and other contractual agreements of business discussions. Secrecy agreements will be rendered meaningless and trade secrets law unenforceable when it comes to the business of being an inventor.

Justice is (or should be) Blind

On the other hand, if Leader prevails:

1. The English language use of the present tense will continue to mean the present, and not the past; just as the Supreme Court has said many times.
2. Infringers will be prevented from playing games with brand name references in selling documents and will be forced to actually prove the engineering contents of those products with hard evidence and not attorney-fabricated smoke and mirrors.
3. Courts will be forced to follow well-settled contract law to assess alleged offers.
4. Courts will be forced to assess the circumstances surrounding secrecy practices and not simply perform a chase for signed NDAs which are only one of many acceptable secrecy practices.

If Facebook prevails, patent trials will become a "dark arts" zoo.

Every champion of property rights should care about this case

For this reason, I believe that every champion of property rights in America should stand behind Michael McKibben and Leader Technologies. If Facebook prevails, jury trickery and court manipulation will be validated by the second highest court in the land. This cannot be permitted in a civilize country.

OPERATION "SPOTLIGHT" – Make your voices heard!

The three-judge Federal Circuit panel needs to hear from the public. We need to send a strong message that corruption will not be tolerated and that fairness, equity and right conduct are expected from our courts. Nothing about Facebook's case makes any sense. They tricked a jury, and then a district court judge, and three federal circuit judges affirmed that trickery. This is unacceptable. The jury, the finders of fact, were manipulated and these judges need to step up. The job of an appeals court is to fix mistakes of lower courts, not simply pronounce blessings of misconduct. We shouldn't be paying them just to go through the motions of justice. If Leader were to lose fair and square, so be it. But to date, in my opinion, nothing about this case is fair or square.

A number of regular readers to my blog have been preparing names and address for your letter writing campaign. That contact information will go up just as soon as this blog post goes live. Then, fire away. This public awareness campaign should not stop until justice done.

New revelations

Leader's press release contained new information that information has surfaced that Mark Zuckerberg not only had Leader's white papers in 2003, but that he obtained an actual copy of Leader's source code in in late 2003. If this is true, this opens the damages in the *Leader v. Facebook* patent infringement case to triple the amount. Also, it exposes Facebook to copyright and trade secrets violations, which if proved, could bring Facebook to its knees.

Leader asks people to come forward / reward offered

A reward is being offered to the first individuals who come forward with credible evidence about the Facebook formative years starting in late 2002 through 2004. If you have such information, you are invited to contact Leader anonymously through a trusted intermediary. Leader's press release has more details on how to contact them anonymously.

Readers of this blog proved themselves – Justice will be served.

My readers did a good job getting to certain media personalities in the last few weeks. Let's now re-double those efforts to send the message that the light of public opinion will shine brightly now on this

Leader v. Facebook case until justice is served.

We will begin posting your OPERATION SPOTLIGHT campaign names and emails now.

Click here to open **Comments** below.

* * *

Posted by Donna Kline on Thursday, June 7, 2012, at 11:26 am. Filed under Investigation. Follow any responses to this post with its comments RSS feed. You can post a comment or trackback from your blog.

{ 40 } Comments

1. Donna Kline | June 7, 2012 at 11:45 am | Permalink

   I am going to start adding links to each new list to this Comment, so keep checking back for new lists.

   (Important tip from a Madison Ave. marketing expert and supporter of OPERATION SPOTLIGHT: it takes 3 contacts per lead before a person receiving your email pays attention to your communication. She also said these 3 contacts need to occur timely, preferably within a 10-day period; so, mark you calendar and keep emailing the same list of people! It's commendable persistence!)

   1. **NEW! Jun. 23, 2012** — **Senate Judiciary Committee**
   2. **House Subcommittee on Courts, Commercial and Administrative Law**
   3. **NEW! Jun. 20, 2012** — Here's a new sample letter shared by Linda K: **Sample Letter to Congresspersons & Senators**.
   4. **House Subcommittee on Intellectual Property, Competition, and the Internet**
   5. **U.S. Supreme Court**
   6. **Media Contacts, List 1**
   7. **Patent Lawyers, Washington DC-area**
   8. **Patent Lawyers, List 1 (Jones Day, Finnegan, Fish & Richardson, Kenyon & Kenyon**
   9. **NEW! Jun. 17, 2012** — **Patent Lawyers, List 2 (Various Firms)**

2. Bill Cran | June 7, 2012 at 11:45 am | Permalink

   Hi Donna, here's a list of **PATENT BLOGGERS** that I have been compiling. Click here. When you click this link a separate window will pop up so you can still see the blog while you are clicking through the list.

   [DLK: The public-awareness lists are pouring IN! Some of them contain many names (good problem)! So. I am going to put each list in its own Page which, when you click the link, will display in a separate window.]

3. bg761 | June 8, 2012 at 3:13 pm | Permalink

   Thanks Donna!
   Received a letter from my Congressman asking me to contact his office in Washington. I talked to one of his legislative staff members this morning and he asked me to forward information on Leader's Federal Circuit Petition. There were also very interested in the "Red Flags" at the U.S. Patent Office regarding the Director's questionable reexamination order of Leader's '761 patent

(interference). They said they would be contacting the Judiciary Committee!
So keep the pressure on!

4.  Brad | June 9, 2012 at 11:20 am | Permalink

   Donna, Readers, can anyone tell me if Romney will have the same access to Facebook data that Obama obviously does? Seems to me that this would be a very interesting point for you to look into.

5.  lucy | June 9, 2012 at 10:21 pm | Permalink

   How is it possible that four judges have punted on justice; bending every rule (designed to protect justice) to allow Facebook to get to its lusted-after IPO without the "embarrassment" of a complete patent infringement judgment against them? A house built on a crumbling foundation will collapse.

   These courts stinketh. What are we going to do about it? If we do nothing, then we deserve this judicial misconduct. Why do we keep paying them to cheat the common man? This has to change. We need to shame these Federal Circuit justices into doing the right thing. Then, we need to install a majority of laymen in lawyer disciplinary councils. Taking away the licenses of white-collar lawyers who play the kinds of games that Facebook has played, and of the justices who accommodated them, will change things pretty quickly I think.

6.  Yes, it stinks! | June 9, 2012 at 10:51 pm | Permalink

   My fellow attorneys are avoiding stating the plain facts in this Leader v. Facebook.

   Up until 3 months before trial this case was overseen by veteran Judge Joseph Farnan who was appointed by President Ronald Reagan. Judge Leonard Stark was his magistrate with no prior judgeship experience. Then, 3 months before the trial was scheduled to begin, Judge Farnan suddenly announced he was retiring from the bench and Magistrate Stark would handle the coming trial.

   Judge Stark was President Obama's and Vice President Biden's (from Delaware) pick to fill a Delaware judgeship (which pundits say had been held up during the Bush administration because Joe Biden did not want the seat to go to a Republican appointee). Leader v. Facebook would become Stark's first federal trial. After being appointed judge, one of Stark's first acts was to allow Facebook to flip-flop its claims and add on-sale bar and public disclosure, after the close of all fact discovery. In my opinion this was highly improper. It dramatically prejudiced Leader's ability to build its defenses to this new claim. Then, during trial, as Donna's latest post, and Leader's press release describes so plainly, Stark cleared the way to introduce a doctored Interrogatory No. 9 and sandbag McKibben's testimony and credibility in order to drive the on sale bar claim to an illegitimate verdict devoid of anything other than half-baked attorney fabrications designed to fool the unsuspecting jurors (unless their opinion was purchased too — any sudden unexplained wealth out there?)

   The Cooley Godward LLP attorney tricks in this case are truly embarrassing and disgusting. Shame on you Michael Rhodes, Heidi Keefe, Mark Weinstein, Sam O'Rourke and Theodore Ullyot. Do we need to start painting you with tar and feathers and forcing you to walk the streets of Palo Alto so your conduct will be exposed for its reprobate nature?

   It doesn't take a rocket scientist to see influence peddling, does it? The legal profession has truly lost its way morally.

I just sent emails to all of the Supreme Court names. The Judiciary Committees and Media are next. Others need to as well. They count volume of communications to decide what issues they pay attention to.

7. Steve and Amy | June 10, 2012 at 11:37 am | Permalink

This is the email we have been sending to everyone so far (I'm up to date as of this morning) that Donna and others have shared.Its very tedious work but we all have to stick to our guns and accomplish what needs accomplished. Take care everyone and stay the course .Perseverance is always admired.These Justices need to meet their truth, just as we do.

Dear Fellow Citizens,

Please refer to Donna's blog below. This investigative reporter has uncovered the truth behind Facebook's success. The real innovators, Leader Technologies (Lewis Center, Ohio), was denied justice by the Federal courts. This patent infringement case ruling cannot stand if we are to protect basic property rights in the United States.

I am urging you to forward this message to all of your colleagues and followers, as well as anyone in a position of power or associated with any media outlet. We, as citizens who want to protect the letter of the U.S.Constitution, must stand together and get the word out to any and all who will listen and help take up the cause.

http://www.donnaklinenow.com

Sincerely,

Amy and Steve
Marion, Ohio

8. holn8or | June 10, 2012 at 1:49 pm | Permalink

Leader followers, it has been a long hard fight and I know that some people are discouraged. Please don't lose the faith. Consistency is the key, and if anything, Leader Technologies has always been steadfast in its need for justice. We never have changed our stance or position. Those against us have vacillated between what seems to be popular or desirous $$$. The Justice system is MIA when it comes to doing the right thing in almost every area now. Leaks are running rampant and this Administration not only, can not be trusted , but is crumbling. This will help Leader, do not give up, we will prevail. Its always Darkest before the Dawn.

9. Linda K | June 12, 2012 at 8:14 pm | Permalink

Our Canadian friends have stepped up to call Facebook out on their corrupt non-disclosure of the *Leader v. Facebook* case.

Here is some of the media coverage:
http://saskatoon.ctv.ca/servlet/an/local/CTVNews/20120608/sask-merchant-facebook-120608/20120608/?hub=Saskatoon

Here's the complaint all set to go to Sections 39-41 where Leader v. Facebook is cited as "First misrepresentation: Facebook did not disclose significant pending litigation."

http://www.scribd.com/doc/96894570/Canadian-Class-Action-Suit-Against-Facebook-QB-No-1005-of-2012-Regina-Sask-Jun-8-2012#page=12

Shame on our US justices in this case for their whitewashing of justice and allowing themselves to be intimidated. Shame on Facebook's Cooley Godward attorneys Michael Rhodes, Heidi Keefe, Mark Weinstein, Samuel O'Rourke and Theodore Ullyot for selling their moral principles on the altar of greed. Shame on the Facebook Board of Directors James W. Breyer (incl. Accel Partners, Jim Swartz and Ping Li), Marc Andreessen, Sheryl Sandberg, Larry Summers and Peter Thiel for overseeing the largest theft in American history. Congratulations for setting such a high moral and ethical example for Russian Juri Milner. Shame on Harvard University for not speaking out against these rogues when you clearly knew this was going on. What kind of moral example are you setting for our children we entrust into your care? Shame on Zuckerberg's roommates for selling your moral standards out at such an early age. Shame on Mark Zuckerberg for cheating his friends and stealing from real American entrepreneurs and inventors.

Go Canada! (and Thank you!)

10. bg761 | June 12, 2012 at 11:27 pm | Permalink

You are right Linda K, Shame on our justices!!

Both the District court's Justice as a Matter of Law decision, (JMOL), and the Federal Circuit's opinion has more holes than a screen door without the screen!

Judge Stark states in his JMOL, "the Court must consider "evidence relevant to experimentation,as well as inter alia, the nature of the activity that occurred in public; public access to the use; confidentiality obligations imposed on members of the public who observed the use; and commercial exploitation." Facebook did not even present any evidence at all other than Leaders testimony that the beta tests were experimental. Facebook didn't even say it was not experimental!!! So where is the "evidence"? Judge Stark spent a lot of time on this subject! WHY?????

The Federal Circuit has even said, "The law recognizes that an inventor may test his invention in public without incurring the public use bar. "Experimental use negates public use; when proved, it may show that particular acts, even if apparently public in a colloquial sense, do not constitute a public use within the meaning of section 102." *Baxter Int'l, Inc. v. Cobe Labs., Inc.*, 88 F.3d 1054, 1059, 39 USPQ2d 1437, 1441 (Fed.Cir.1996). I don't see any LEGAL analysis for experimentation.

I will bring you more later!

11. JohnC | June 13, 2012 at 1:04 am | Permalink

Donna and Mike McKibben (Linda, bg761, Tex, holn8r, and whatever other aliases you are using), I am a practicing appellate lawyer and I cannot begin to tell you how much damage this blog, the comments, and the "Operation Spotlight" are doing to Leader's case. You are personalizing the appellate justices and making a mockery of the review process. Do you not think that there are law clerks and court personnel reading this? How do you think the justices react to having their pictures on press releases? To people telephoning and harassing Supreme Court personnel? To offering a reward ("bribe" as would be interpreted by the courts) for testimony. By making a public spectacle of this process, you are baiting the judiciary and essentialy ensuring Leader's demise. Leader has been turning the entire appellate process into an online circus for the past 2 years through press releases, YouTube videos, and endless, endless personalization of the judges and

attorneys involved in the process.

I have no doubt that this comment will be mocked on this board, but when the Federal Circuit denies a rehearing and this matter is finally dead in the water, I think you will have to take a hard look at what you did and how it adversely affected Leader's prospects.

12. Linda K | June 13, 2012 at 7:39 am | Permalink

Well JohnC, let's see, you are proposing that Donna Kline and Mike McKibben are the real identities behind every Commenter on this blog? Wow. That kills your credibility right there.

You reveal for the first time that I have read that you are a lawyer, and an appellate lawyer at that. Perhaps you are Mark Zuckerberg in disguise? LOL.

The basic problem with your thesis is your premise, and that premise is that legal misconduct should not be exposed when it has stepped beyond the bounds of decency. Respect must be earned. You lawyers (if you are a lawyer) are going to have to stop hiding behind your "old boy" secrecy and admit that as a profession you have lost your moral way. You predict that Leader will lose. Maybe they will, but from what I have analyzed, if they lose, they will lose in the open and any misconduct or misapplication of the law by the justice system (who Facebook handlers are intimidating with their misconduct – are you one of them?) will now be exposed for the whole world to read. That is the benefit of this blog. We will not stop exposing what you are doing.

The truth cannot hide behind this veil of misconduct you lawyers call the "Rules of Civil Procedure." There is nothing civil about what you people at Facebook are perpetrating upon the world. You don't deserve that kind of respect. What you are doing is not decent.

And no, I don't think you are an appellate attorney, I think you are an attorney for Facebook who this site is getting a rise out of. LOL. Meep. Meep.

P.S. Oh, I almost forgot. You are laying the blame for Leader losing a lawsuit and the justices not doing their jobs on this blog! Yawn, that is such a typical tactic of bad guys: find something, anything to blame to divert attention from your misconduct. You're outted. Get a productive job, would you?

P.P.S. One more thing. You people at Facebook have 900,000,000 users that you can communicate to with the press of a button. Your argument that Donna's blog website will be the reason for Leader losing its appeal is classic misdirection. Last time I checked, Facebook users are also discussing the Leader case and Facebook's misconduct in the IPO as well. Does this mean Facebook is going to be taken down by the SEC because Facebook users are railing against the SEC's potential misconduct?

13. Bill C | June 13, 2012 at 8:09 am | Permalink

Moral Lesson #1 for Facebook and Friends (bought and intimidated into silence):

"Respect cannot be learned, purchased or acquired – it can only be earned."

14. Tex | June 13, 2012 at 8:56 am | Permalink

John C ,or whoever you are, I am not an "appellate lawyer" and therefor must not understand the concept of fairness/equity that our laws should provide all Americans, especially those that follow

the guidelines of our protective government agencies such as the USPTO .If Zuckerberg had been a lilly-white and innocent young entrepreneur, citizens like me could have been more forgiving. Sadly, his very short business history is laden with inappropriate behavior and dishonesty. JohnC, do have a disagreement with that statement ? So when an old guy like me that has built, operated and sold several successful businesses, who has served on the Boards of several new startups built around new patented innovations, and who has been involved with honest venture capitalists for 45 years , sees a theft of a patented property that has such a far reach , with such great value, I get a little concerned that our great society is unraveling.....you say that the dialog of this blog has injured Leader. I say that the theft of their patents, and the failure of our justice system to properly adjudicate this outrage, has damaged Leader. Your thinly veiled threat of some form of repercussions to the participants of this blog is quite childish and sophomoric.If you truly are an "appellate attorney" that is not on Facebook`s payroll, I suggest that you take another course in patent law...it was one of my favorite courses in law school The tricks and tomfoolery used by the defendant in this case is beyond the notion of equity/fairness and you know it.

15.  Vladymir | June 13, 2012 at 9:09 am | Permalink

old ussr courts made pretend of justice too
be careful americans. pretend ruined us
sorry my english bad
think you get my idea
donna my hero

16.  Incredulous | June 13, 2012 at 10:32 am | Permalink

Okay, JohnC – let me get this straight. You're saying that we should be good little Muppets and not make waves. You're saying that the very judge and justices who have no legal compass for dealing with the facts should be given a pass – that we should be mindful of their feelings. Well, I and the thousands who are rallying behind Leader have another philosophy – and it involves shining a "Spotlight" on you and your ilk 24/7 until the spineless media and our government agencies admit that this system is broken. To sit back and wait for more of the same treachery to occur is the definition of insanity.

17.  bg761 | June 13, 2012 at 1:23 pm | Permalink

John C, The judge's actions speak for themselves! If you were not aware, the new America Invents Act, (AIA), states that the only court to hear patent law cases if a patent owner doesn't agree with the Patent Trial and Appeal Board's decision is the Federal Circuit Court of Appeals. If they don't even follow their own well settled case law, how are our inventors supposed to protect their patents when they follow all the rules correctly and the judges take it on themselves to "misquote" deposition testimony and cite attorney argument as a result. Federal Rules of Evidence; Rule 106. Remainder of or Related Writings or Recorded Statements, If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time.
When the Appellate judges decided to only quote the second question of only 2 questions that Facebook played of McKibben's deposition testimony, they did not consider the first question asked. An example would be, Q1. "Did you have any technique for identifying company checks written to the utility company 6 years ago? A1. I am not sure; my employees keep records of those items. Q2. Can you identify any company checks written to the utility company 6 years ago? A2. That was a long time ago. I can't remember a specific check. Conclusion by the Appellate court

standards. “NO CHECKS WERE WRITTEN!” They did not consider the first question at all in their haste to make a decision.
There are many cases that cite this very rule, Federal Rules of Evidence; 106, of which they ignored!
In Leaders case Facebook did not provide source code which would have shown the specific dates (company check register), nor did they ask which developers were involved in tracking the various iterations of the software, (employees). Show me what evidence Facebook provided for the court to reach that conclusion! That’s just one small item that the Appellate court erred with. If I can find this error, a layman, then I hope all the law clerks and court personnel that you say are reading this are challenged to excel at their work. It is tedious, however, are country needs a wake up to improve our justice system and not let the attorney, good old boy network, pat on the back, wink wink system that we have come to know, be the standard!

18. julie | June 13, 2012 at 11:12 pm | Permalink

Let’s see. We have a PUBLIC justice system specifically designed to use PUBLIC accountability to discourage corruption. And yet, we have attorneys like JohnC telling us that our judges will PUNISH the PUBLIC with bad decisions and bad law if we criticize and PUBLICIZE questionable conduct. Not a good state of affairs.

19. holn8or | June 14, 2012 at 6:16 pm | Permalink

John C First of all I am not pretending to be someone I am not. I believe in Mr. McKibben and am so thankful that Donna Kline has so masterfully and tactifully reported the true story of the Facebook Engine theft. I am convinced now that you are a pot-stirrer. You only want to negatively challenge those of us who are trying to be heard. As for the Justices, they don’t give one whit about what we think or say. If they did they would’ve done the RIGHT thing and ruled in our favor. Some people think that Leader may be in Hot Water right now but hot water can turn eggs hard and spoiled. It can turn carrots soft and pithy but it turns coffee beans into a wonderful fragrant drink. Hey John C stop being carrots and eggs and join us for a wonderful cup of coffee

20. bg761 | June 14, 2012 at 7:02 pm | Permalink

We have another awkward judge’s moment here. In their opinion the judges state, “But, in this case, Leader fails to point to any contemporaneous evidence in the record that indicates that the Leader2Leader® powered by the Digital Leaderboard® engine that existed prior to the critical date was substantively different from the post-critical date software; indeed, the evidence points in the opposite direction.”
In “layman” terms the judges just said that Leader fails to point out any evidence that the pre-critical date software, (Provisional), was no different than the post-critical date software, (‘761 Patent), in fact they say the evidence, the pre-critical software, was the ‘761 software entirely!
Leader argued profusely that the ‘761 software was not complete before the filing of the patent!
Now this is where it gets interesting. The jury said, the District court agreed and there was a verdict that Leader was not entitled to the provisional patent date because the provisional patent, this is my paraphrase, “DID NOT EMBODY” the claims of the ‘761 patent. You can read it in Judge Stark’s JMOL ruling yourself!
Come on people, who is kidding who? Talk about trying to justify something! This is just another item that the judges use to justify their ruling.
I will point out more later, this is just another example. Maybe we will get to all the Federal Circuit and Supreme Court rulings on the meaning of “present tense”! Yowsers!

21. Disgusted | June 14, 2012 at 7:29 pm | Permalink

Every time I read another assessment of how slovenly the Federal Corcuit judges performed in their ruling my beliefs are further reinforced that one of three things is the truth: (1) the justices were sleeping, (2) the justices are incompetent in patent law, or (3) the justices were intimidated by bribery or coercion. I don't think it was 1 or 2. Facebook/Wall Street needs to give them permission to actually make good law. Oh please please please oh most powerful ones. Gack. (We've had it with your petty corruption.) Hell hath no fury....

P.S. JohnC, Try loving liberty more than your next Facebook paycheck. Our parents and grandparents paid a huge price for the freedoms you seem to toss away so recklessly. I assure you they did not choose to die for corrupt attorneys.

22. Mike Kennedy | June 15, 2012 at 11:28 am | Permalink

John C on May 24th you wrote that Facebook didn't disclose the Leader lawsuit in their S-1 report and that was the right thing to do. With that and your recent ramblings of June 13th you really have shown what kind of an attorney you really are, i.e. one of the low life bottom feeders that give some attorneys the black eye for the truely great ones. Not only are you NOT a patent attorney but you are more likely just a wanna be one. Good luck with Derrick in your junior year.

23. bg761 | June 15, 2012 at 3:58 pm | Permalink

To the "JohnC's" out there. Donna has a headline at the start of this blog, "The Federal Circuit is being asked to fix their misapprehension of the evidence."
Why are you not looking at the evidence that was presented at this trial and see for yourself the omission of applying the most basic rules that these judges missed. If you are, an "appellate lawyer", then you might have to stand in front of them someday to argue a case. Wouldn't you want to have the "confidence" that the judges would apply the standards of law and not just "gloss" over evidence and ignore the standards that they have set themselves!
For example, this is just one section from the patent office rules about the standards required for a patent to trigger the "on sale bar";
2133.03(b) "On Sale" [R-5] – 2100 Patentability

Traditional contract law principles are applied when determining whether a commercial offer for sale has occurred. See Linear Tech. Corp. v. Micrel, Inc., 275 F.3d 1040, 1048, 61 USPQ2d 1225, 1229 (Fed. Cir. 2001), petition for cert. filed, 71 USLW 3093 (Jul. 03, 2002) (No. 02-39); Group One, Ltd. v. Hallmark Cards, Inc., 254 F.3d 1041, 1047, 59 USPQ2d 1121, 1126 (Fed. Cir. 2001) ("As a general proposition, we will look to the Uniform Commercial Code ('UCC') to define whether. a communication or series of communications rises to the level of a commercial offer for sale.").
In their opinion the judges don't cite any examples where they compared, "Traditional contract law principles". In fact the only "contract" they bring up is to Wright Patterson AFB and it is for a grant, however, it even states that there can be no buyer/seller relationship. Facebook presented no evidence of a "contract"! Where are the "contracts" or third party testimony presented by Facebook?
One little caveat when looking up the Wright Patterson AFB reference, this is by the Federal Circuit, "We have held that merely granting a license to an invention, without more, does not trigger the on-sale bar of 102(b). See Mas-Hamilton Group v. LaGard, Inc., 156 F.3d 1206, 1217, 48 USPQ2d 1010, 1019 (Fed. Cir. 1998)."
Just another misapprehension of the evidence? REALLY!

24. Steve Williams | June 15, 2012 at 4:54 pm | Permalink

".....Pride cometh before the fall...". I heard that once in a pulpit (no need to name the church). Looking back on that sermon, it has made me realize that people really need to "check themselves" from time to time, and this truly is one of those paramount moments.

While the majority of the readers of this site (and, again, kudos to Donna for being a true investigative reporter) know and see the big picture, there are a few who steadfastly deny the facts. Why? I could argue that (they) are plants; their sole intentions are to disrupt our collective progress and to discourage us from moving forward. I could argue that (they) have a substantial amount of facebook credits...aaaak, I mean money, to lose if this case goes Leader's way. I could also argue that they feel just a little bigger than their britches, because they out-smarted the smartest people in the room. Either way, "pride cometh before the fall...".

JohnC (does the C stand for capitulation? conformity? cowardess? Or cracker jack lawyer?), you and I, and everyone else here, knows that speaking about injustice does not prejudice any outstanding case, as with Leader v. Facebook. On the contrary, it only emboldens both sides to take a harder look on their respective arguments. I am no "appellate lawyer", and God bless you on your achievement, if you are as such, but I cannot, in good conscience, not speak out about what I and others have witnessed as an ultimate injustice (no matter where it has been decreed from); for that is the foundation of our American way of life. We DO have the right to speak about our grievances. We DO have the right to assemble to voice our say. We DO have the right to question authority, especially when that authority seems tainted. And no matter what any elected official, or judge, has to say about it, that right comes not from government, but God almighty, and no one shall separate me from Him.

So, to the naysayers and doubters, I say this: I sleep well at night. I have the love of God, a beautiful woman, and I am at ease with who I am. I hope that people with JohnC's perspective grasp this concept quick. I am in no way calling JohnC ungodly; just the mindset of capitulation, conformity, cowardess, cracker jackness.

God Bless you all!!

25. BG | June 15, 2012 at 4:56 pm | Permalink

Donna its about time for an update on Leaders new app patent.This was to be a deal breaker for FB.....is there any new info out that can be released. Thanks

26. bg761 | June 16, 2012 at 12:29 pm | Permalink

I will keep this short!

Another instance where the judges seem to not have looked at the court records is where they say in there opinion that, "But Leader did not qualify its interrogatory responses in that manner. The responses did not specify any date ranges nor did they identify versions or builds of the software—information that Leader appears to have tracked". **Well, actually Leader did!**

Mr. McKibben was asked by Leader's attorney, Ms. Kobialka, "And what did you understand you were being asked with respect to that interrogatory?" Facebook's attorney, Mr. Rhodes, "Objection, your Honor. I'm going to object to that as a conclusion, and renew my objection of her leading of 611 (c)." The Court overruled.

Leader's attorney and Mr. McKibben went on to clarify that Interrogatory No. 9 COULD NOT have been true in 2002. This means the Court's opinion was FACTUALLY WRONG... as a matter of LAW.

And by the way, shouldn't the burden have been on Facebook to provide evidence that earlier versions of the software contained the entire '761 patent? Facebook had the source code for Leader that contain time stamps for code entry! Leader could not have produced it per the rules of evidence. That was not the issue at the time of the interrogatory!

27. Meowzer | June 16, 2012 at 2:08 pm | Permalink

Go Donna! Meow!

28. Donna Kline | June 17, 2012 at 10:55 am | Permalink

Thanks Meowzer! NOTE TO ALL READERS: New OPERATION SPOTLIGHT LIST just posted:

NEW! Jun. 17, 2012 — Patent Lawyers, List 2 (Various Firms)

NEW! Jun. 18, 2012 — New Media Contacts, added

Your efforts are getting attention! Keep it up!

29. Senator wants info | June 17, 2012 at 11:15 pm | Permalink

My Senator's legal people have just asked me for more detail on the Leader v. Facebook issues regarding the questionable circumstances surrounding the Federal Circuit "decision" and the USPTO "remand." If anyone has suggestions, I am all ears. They need it by this Friday. We're getting attention folks.

Thanks,

Paul

[DLK: This is from a regular poster, this is a legitimate request.]

30. bg761 | June 18, 2012 at 10:41 pm | Permalink

I have another update!
I was doing more research when I came across this little gem. September 4, 2009, Judge Stark is deciding three discovery issues presented to him. One issue happens to be the Interrogatory #9, Facebook has propounded Interrogatory No.9, which asks: "For each claim of the '761 Patent that [Leader] contends is practiced by any product(s) and/or service(s) of[Leader], identify all such product(s) and/or service(s) and provide a chart identifying specifically where each limitation of each claim is found within such produet(s) or service(s)."
Notice "the present tense" used that Leader has always said the question was asked in. Judge Stark goes on to say,
"I agree with Facebook that the issue of whether Leader offers products that practice claims of the patent-in-suit is relevant to evaluating Leader's request for injunctive relief, and particularly the element of irreparable harm (and the related matter of whether the parties here are direct competitors). However, I agree with Leader that it is overbroad to require a patentee to disclose all

of its products that practice any claim of the patent-in-suit, including those products that only practice claims that are not asserted in this litigation. I further agree with Leader that it would be unduly burdensome to require Leader, as the patentee, to produce detailed claim charts showing precisely how its products practice each of the asserted claims."
Notice that Judge Stark was careful to use "present tense" wording in his statement! But wait there is more!!!!!
Judge Stark goes on to say, "Facebook is entitled to know every Leader product or service that Leader contends practices any of the asserted claims of the patent-in-suit. Facebook is also entitled to know which claims are practiced by which of Leader's products and services. However, a proper weighing of the relative burdens on the parties, as well as the relevance of the discovery Facebook seeks,leads me to conclude that Facebook is entitled to nothing more than this in response to Interrogatory No.9." Again, all "present tense" wording!!!! Never uses the past tense!
See, http://depatentlaw.morrisjames.com/uploads/file/08%20862%20383.pdf , for the entire Order.
How do both courts miss this! This was an "order by Judge Stark!!
Talk about misapplying justice. And we are told not to point this stuff out! WHY?
Can you say embarrassing!

31. Tex | June 19, 2012 at 7:46 am | Permalink

Very well done, "bg".....you are a bulldog ! The discouraging part of this particular battle for Justice is the fact that a man`s ideas, designs, and legal patents are hanging on a few parsed words and the "tense" in which an active US judge presents his comments. Mr. McKibben spent more than $10 million dollars and over a hundred thousand hours to create a platform that now carries the Facebook empire.....it clearly was stolen by the man that now leads the Facebook empire. What the hell has happened to our nation of laws ? Today, we view a situation and determine its legality by its" outcome "rather than by the actions (legal or illegal)of men that achieved that outcome....as Derek implied, why are we all so bent out of shape about Leader being robbed, Facebook will make the world a better place ! And now the Facebook legal team has won a case of outright THEFT because of a highly technical, fabricated default, just moments before an IPO that maybe was the most controversial in US history. Now throw in the USPTO `s remand and Zucks personal relationship with the President of the United States of America and we have a smelly bowl of soup.....the sad part of this entire ordeal is that this cabal in Washington is so corrupt (Eric Holder and his Fast and Furious fiasco, and Obama`s usurpation every day of our Constitution) that this heist is insignificant to the press and even the Courts .Time is on Zuckerbergs` side because the fire in the belly of all of us sheep will wain....Donna, I pray you are putting a bigger project together and it becomes an all-time best seller....in the end, I hope it allows justice to return to our uncivil society.

32. Donna Kline | June 19, 2012 at 9:00 am | Permalink

All, a well-placed friend of this site recommends that we start contacting the **Senate Judiciary Committee** on the *Leader v. Facebook* injustice. Here's the contact information:

NEW! Jun. 17, 2012 — Senate Judiciary Committee, Senator Orrin Hatch, Chairman

33. Linda K | June 20, 2012 at 12:15 pm | Permalink

Hi All. I have written this letter to my Senator, and thought I should share it with you to save you some time. I am a legal writer and thought you'd like to have this to refer to. Use any part of it you like. I am sending something similar to this to other opinion makers as well. I was able to speak

with my Senator's legal staff and they asked for a brief overview of the issues in order to get their boss up to speed more quickly.

[DLK: Thanks Linda K! Well done.]

SAMPLE LETTER TO CONGRESSPERSONS AND SENATORS (and MEDIA)
See Contact Lists above.

YOUR NAME
YOUR ADDRESS
CITY, STATE ZIP
Tel: (NNN) NNN-NNNN
Fax: (NNN) NNN-NNNN
Email: xyz@abc.com

SENATOR'S OR CONGRESSPERSON'S NAME
Committee / SubCommittee
ADDRESS
Washington, DC ZIP
Tel: (NNN) NNN-NNNN
Fax: (NNN) NNN-NNNN
Email: abc@def.org

Dear NAME:

Re: Your attention is urgently requested in a patent infringement case now before the Federal Circuit—*Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.) I believe that this case is critical to the future of American innovation and entrepreneurship and worthy of your attention

Leader Technologies, a Columbus (Ohio)-based software development small business, raised well over $10 million in seed capital, invested over 145,000 man-hours, and filed for patents for its technology starting a decade ago. In other words, they "did it by the book." Lawfully. Their inventions are now called "social networking."

Starting sometime in late 2003 Mark Zuckerberg stole this technology to begin Facebook. He had the substantial support of some individuals and alumni from Harvard University and certain California venture capital firms. These same individuals and firms have made tens of billions selling their Facebook stock in the IPO; despite the overall failure of the IPO. This financial backing fueled the infringement. To date, some 900 million people use Leader's technology on Facebook's infringing platform.

Leader has been awarded multiple patents on these innovations.[1] In Nov. 2008 Leader sued Facebook for patent infringement of U.S. Pat. No. 7,139,761.[2] Facebook was found guilty on 11 of 11 counts at a trial in Jul. 2010, but did succeed in confusing the jury on an obscure area of patent law called "on sale bar" which technically "invalidates" the patent for this case until it is overturned. They accused Leader of trying to sell their invention too soon, but presented nothing but innuendo in support. No experts. No witnesses. They simply put the inventor on the stand as their only witness and got the jury to disbelieve him—all without a stitch of hard evidence. The district court then affirmed that disbelief as evidence of an ostensible opposite fact. This injustice alone should be apparent. It gets worse.

On Mar. 5, 2012 the Federal Circuit conducted a hearing before Presiding Judge Alan A. Lourie, Judge Kimberly A. Moore and Judge Evan J. Wallach. Their opinion, timed conveniently within hours of the Facebook IPO road show, deferred to the jury's view of the evidence, but utterly failed to evaluate that evidence against well-settled patent law, thus creating a manifest injustice. See Footnote 3.

On Jun. 7, 2012 Leader filed a combined petition for rehearing (the 3 judges) and en banc hearing (the 12 judges).[3] This petition does a good job of laying out the substantial problems of law.

Leader Technologies has several hundred investors who took the risk with Leader's inventor Michael McKibben, starting in the late 1990's, to invent and build a technology that the world now calls "social media." At trial, much evidence on both sides was presented that ultimately proved that Facebook is "literally infringing" Leader's patent. Facebook was found guilty of infringement on 11 of 11 counts. By contrast, Facebook presented no evidence to prove "on sale bar." Instead, Facebook relied solely on attorney argument and innuendo to confuse the jury. Rather than fix this injustice in post-trial motions, the district court forced Leader to appeal.

As a matter of law, it is vitally important that the Federal Circuit fix this injustice. If allowed to stand, this decision opens the door for big infringers to simply attack inventors with innuendo when they don't have hard evidence. It is no surprise that dueling attorneys can create wonderful trial theater to sway the emotions of lay juries. That is what happened here. This is why well-settled law is in place to apply objective standards for evaluating evidence in order to prevent surmise, innuendo and speculation. NONE of that well-settled law was used by the Federal Circuit to weigh the alleged "on sale bar" evidence.

Fig. 1 *– Timeline of Facebook's claims showing Leader was blindsided by the new "on sale bar" claim after the close of all discovery, thus preventing Leader from preparing a proper defense. Such abuse of judicial discretion is an unacceptable injustice, especially since this decision prejudiced an American inventor's rightful property. It is akin to a surveyor moving the boundary stakes on a plot of land and the judge just giving his blessing to the improper act. See Leader's Combined Petition, p. 6; See Footnotes 2 & 3 below.*

Instead, the Federal Circuit's opinion simply punted. The existence of evidence is not the standard, the sufficiency of the evidence is. Facebook's so-called evidence boiled down to one altered interrogatory and whether the verb "is" can be applied in the past tense. If the Federal Circuit waives Facebook's legal requirement to prove its case with "clear and convincing evidence," no patentee (or holder of any property, real or intellectual) is safe from such capriciousness. I believe nothing less than American innovation is on the line in this case. They've seized Leader's rightful property illegally, and the courts are letting them get away with it. What other kinds of property are next?

I appeal to you to look into this matter and evaluate the conduct of the Federal Circuit Justices with Judge Lourie, presiding. I have followed this case for years and believe that Leader Technologies and Michael McKibben are the kinds of inventors that our economy and country need to encourage, not persecute.

Former Bloomberg TV investigative reporter Donna Kline has been investigating this case and has prepared a well-supported analysis at http://www.donnaklinenow.com

Yours sincerely,

YOUR NAME

Footnotes:

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1. U.S. Pat. Nos. 7,139,761 ("Dynamic association of electronically stored information with iterative workflow changes"); 7,925,246 ("Radio/telephony interoperability system"); 8,195,714 ("Context instantiated application protocol"); and, Pats. Pending.

2. *Leader Technologies, Inc. v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Del. 2008). Numerous prejudices against Leader occurred during the trial. Perhaps most egregious is that the "on sale bar" claim was only added after the close of discovery, three months before trial, preventing Leader from building a defense.

3. Combined Petition for Panel Rehearing and En Banc Rehearing of *Leader Tech v. Facebook*, Case No. 2011-1366 (38 pgs.) before the United States Court of Appeals for the Federal Circuit in Washington, D.C.

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34. bg761 | June 21, 2012 at 10:32 pm | Permalink

Keep contacting your representatives.

Just reading the Federal Circuit's opinion on Leader's,"rocky financial times" and "McKibben explained to Leader's employees that a contract from Boston Scientific, The Limited, or American Express, among others, would change Leader's valuation position with institutional investors." I had to get rid of a couple of fur balls!

These were not presented to the jury at trial!!!!

What gives? The judges go back into court records to bring out items that were not even argued to the jury to justify their position, but totally ignore the pertinent evidence that "WAS" presented. NDA's, "present tense" wording and true and accurate deposition testimony! Not the Facebook attorney argument where they misquote what was actually said.

Let's keep pushing!

35. poppy | June 22, 2012 at 1:23 pm | Permalink

I just found a quick link to this (Donna's) site! It is:

http://www.fbcoverup.com

Looks like a nice way to say it all!

36. Donna Kline | June 23, 2012 at 3:14 pm | Permalink

Thank you to a regular commenter for providing these links to the members of the **Senate Judiciary Committee**:

http://www.donnaklinenow.com/operation-spotlight-senate-judiciary-committee

37. Bill C | June 25, 2012 at 8:02 pm | Permalink

Donna,
Rumor has it that you are working on a blockbuster. In the meantime I have been contacting senators, congressmen, media and attorneys from your lists. Thanks for your tireless efforts. How much of FB's ill-gotten gain has already gone off shore? I see Peter Thiel has wasted no time setting himself up for a move offshore? Don't you just find it precious the way these guys are now decrying the US business opportunity in favor of their foreign buds? Can anybody say "escape securities regulation?" And, "run faster than the regulators." Wall Streeters just think they are a little bit better than everyone else. The rest of us have to follow the rules, but not these yahoos? The Leader case is uncovering all sorts of creepy crawlies under ever stone that gets turned over. Thanks to whoever set up http://www.fbcoverup.com. Much easier to type,

38. Randall-M | June 27, 2012 at 3:12 pm | Permalink

Hey all,

I haven't posted much before because I am pounding away on the letters from the lists above. I just today received a response from **Senator Richard Lugar** promising further attention to the Leader v. Facebook situation at the US Patent Office regarding Director David Kappos' illegal remand of Leader's patent. Senator Lugar picked up on my suggestion that it was a political move to protect his (and who else's?) precious Facebook. (Donna, will you get someone to post the letter and then include the link here? Thanks!)

[DLK: Here you go: http://www.scribd.com/doc/98457053/Senator-Richard-Lugar-of-Indiana-re-Leader-v-Facebook-and-USPTO-27-Jun-2012]

We're praying here in Indiana that the truth will win out and the thieves will get their just reward.

[DLK: Thank you so much for the prayers.]

Sincerely,

Hammering away in Indiana and very appreciative of Donna's efforts!

39. newbe | July 2, 2012 at 6:50 pm | Permalink

Donna is a GOD david is the SPEAR

40. lisa | July 3, 2012 at 3:35 pm | Permalink

I have been digging further into ConnectU discovery from 2005 and found more evidence of a long-time plan to defraud Leader? As early as November of 2005 the Winklevoss twins were poking around at Zuckerberg's association with **Peter Thiel**, **James W. Breyer**, **Accel Partners**, **Accel IX, LP**, **Accel IX Strategic Partners LP**, and **Accel Investors 2005**. These are the very entities that Breyer and Thiel used to pull out over $7 Billion out of the IPO on Day 3. Here's the 2005 filing:

> http://www.scribd.com/doc/99023688/ConnectU-v-Facebook-07-CV-10593-DPW-Doc-No-361-13#page=3