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U.S. Supreme Court petitioned to hear *Leader v. Facebook* appeal

Petition cites abuse of constitutional due process and ignoring of long-held precedents. Federal court previously ruled that the engine running Facebook is Leader Technologies' invention

Columbus (Nov. 30, 2012)—On Nov. 16, 2012 Leader Technologies filed a “*Petition for Writ of Certiorari*” with the U.S. Supreme Court in their patent infringement battle with Facebook. Such writs ask the court to review the decisions of lower courts for legal error.¹

“The Federal Circuit’s decision in our case was wrong both legally and ethically,” said Leader CEO and inventor Michael McKibben.

“Legally, after Facebook’s case fell apart, the court should have affirmed the verdict that Facebook literally infringes our patent on all 11 counts, or they should have referred the case back to the district court for more fact-finding,” McKibben noted.

“Instead, they secretly fabricated *new* arguments and evidence for Facebook without giving us a chance to defend ourselves against these new accusations.”

McKibben explained, “This is a fundamental violation of our Fifth and 14th Amendment right to due process which guarantees the right to confront one’s accuser.”

McKibben said that without a hearing the judges had no way to assess their newly-created evidence. “Despite the fact that Facebook’s evidence was *all* discredited, the judges had apparently made up their minds not to rule against Facebook and were looking for ways to justify their foregone conclusion.”

As an example, McKibben cites their opening premise. “It was a false statement that Leader had admitted something, when Leader had actually said the opposite.”

¹ [Petition for Writ of Certiorari](#), *Leader Technologies, Inc. v. Facebook, Inc.*, No. 12-617 (U.S. Supreme Court Nov. 16, 2012).

They also cited a single American Express message that was never evaluated at trial. Their arguments were innuendo at best. *None of it* was tested against well-settled court procedures.”

Federal Circuit has no mandate to make new arguments and evidence

McKibben continued, “Judicial experts tell me that appeals judges have no mandate to make up new arguments for a party who will otherwise lose. They certainly have no mandate to do such things **in secret**.” In addition, the court did not use the Supreme Court’s *Pfaff v. Wells Elecs., Inc.* test or their own *Group One v. Hallmark Cards* test on their new arguments. These are two key tests for on-sale bar allegations that were ignored. Legal experts say this is the first time in 19 on-sale bar cases over the last decade where the Federal Circuit ignored the *Pfaff* test.

“What the Federal Circuit did is a little like issuing a judgment for a parking violation from a city that neither you nor your vehicle have ever visited.”

“Ethically, judicial financial disclosures reveal that at least two of our judges stood to benefit financially from decisions favorable to Facebook,” McKibben said. “In addition, the court’s decisions in this case were carefully timed to coincide with key Facebook-friendly events.”

McKibben points out that the court’s decision was published on the *same day* that Facebook started its initial public offering Roadshow in New York. “Then, I learned from *Fox Business* reporter Shibani Joshi during a live national TV interview² that the court had denied our petition for rehearing. Our attorneys were not notified until three days later.”

“The evident purpose,” McKibben continues, “was to blind side me on national television and illustrate the extent of Facebook’s influence over the judicial process. To us, it was just more evidence of judicial misconduct. The court’s bias is obvious.”

When the court was asked by a respected inventor and Internet pioneer to disclose their conflicts of interest, they refused. They even motivated The Federal Circuit Bar

² Shibani Joshi. Interview with Michael McKibben, Chairman & Founder of Leader Technologies, Inc. [Fox Business](#), Jul. 16, 2012.

Association (which is heavily populated by Facebook law firms and large investors) to slip in a precedential motion to absolve the judges' conflicts of interest.³

When Leader began inventing, the Internet had only 10 million users and Mark Zuckerberg was in junior high school

Responding for the first time to the Facebook assertion that Leader is merely disappointed that Facebook is successful and Leader is not, McKibben responded "When we began inventing what is now called social networking in the late 1990's, the Internet had fewer than ten million commercial users. By my calculations, Zuckerberg was in junior high school then."

"Inventing is hard. Copying is easy. The ink was still drying on our engineering drawings when we believe Zuckerberg and his financiers decided to steal our invention. It stands to reason that a market can be grown quickly when one has no respect for morals and laws. It is well known that while counterfeiting makes money for the counterfeiter, it depresses the market for everyone else, including the inventor."

"Zuckerberg says he built Facebook in one or two weeks. This is virtually impossible. New testimony says he obtained a copy of our actual source code in late 2003, perhaps even the very night he hacked the Harvard House sites. Any engineer will tell you that this is the only way to be able to have offered a fully-developed platform that in reality cost us \$10 million, three years, and 145,000 man-hours to create."

McKibben noted: "Our engineering records, which were *blocked* by the judge from being presented at trial, show that our final debugging of a critical module occurred the night of Oct. 28, 2003—the very same night that Zuckerberg entered in his online diary 'Let the hacking begin.'"

"In 2005 Leader was helping Governor Kathleen Blanco, the State of Louisiana and the American Red Cross save lives and recover from the devastation of Hurricane Katrina, while Zuckerberg and his financiers were busy counterfeiting our invention and inviting third parties to write apps for it at Stanford University."

³ This is despite the fact that Canon 2 of the Code of Conduct for United States Judges and Judicial Employees says that judges and judicial employees should "avoid impropriety and the appearance of impropriety in all activities."

McKibben believes that social networking has not experienced a normal growth curve. He says, “Our invention was stolen and given away from the very beginning. What has developed is a distorted version of our innovations, skewed to maximize advertising revenue and pump-and-dump stock while sacrificing a rational development. This includes respect for personal privacy, security and property.”

Eminent American historian Professor Hy Berman observed, “I looked into Leader’s claims by closely examining the content of Facebook and found that everything in Facebook’s control is open to all and can be easily manipulated for political and commercial gain. If intellectual property theft by the powerful and well-connected is not stopped, future innovation is jeopardized.” Professor Berman is a former political adviser to Vice President Hubert Humphrey.

The U.S. Supreme Court Decision-making Process

The Supreme Court’s docket indicates that on Nov. 19 Facebook waived its right to respond to Leader’s petition, and on Nov. 28 the Supreme Court distributed Leader’s petition for a conference on Jan. 4, 2013.⁴ According to *Counsel Press*, the court held 39 conferences in 2011 and they estimate perhaps only 20-25% of the petitions are even discussed, although the actual figures are a closely guarded secret. They say that those petitions that are not discussed are denied automatically. Given these statistics, it appears that Facebook has chosen to simply play the odds, or they may be playing more insider influence games.

Counsel Press says that Justice Alito is responsible for reviewing all petitions distributed, after which the petitions are split up among the other eight justices. Then, one of each justice’s four law clerks reads each of that judge’s allotment of petitions, summarizing it with a recommendation. These memos are sent to all justices and the Chief Justice prepares a ‘discuss list’ of cases that he thinks are worthy of further discussion. Other justices add to the list. The granted petitions come from this list.⁵

McKibben said that certain Facebook’s attorneys appear to be extremely active in the Washington D.C. appellate legal clique, and he hopes that this dubious coziness does not extend to the U.S. Supreme Court. He noted that the DC Bar Association recently refused to investigate a disciplinary complaint against the Federal Circuit about their undisclosed financial holdings in Facebook brought by Silicon Valley

⁴ U.S. Supreme Court Docket. [Case No. 12-617](#), Petition for Writ of Certiorari, *Leader Technologies, Inc. v. Facebook, Inc.* (U.S. Nov. 16, 2012).

⁵ Liebman, Roy I. “Distributed for Conference at the Supreme Court of the United States.” [Counsel Press](#), Oct. 25, 2012.

Internet pioneer and inventor Dr. Lakshmi Arunachalam, former director of Network Architecture for Sun Microsystems.

Dr. Arunachalam observed, “The conduct of these federal courts causes me grave concern about the future of innovation in America. The courts should be protecting the inventor, not the big infringer. They have supported Facebook with such trivialities as whether the verb ‘is’ is present tense. Now they are trying to railroad an unjustified verdict based solely upon legal procedure that everyone can see is nothing but ‘old-boy’ attorneys manipulating the legal system.” The Bar’s refusal also revealed that the Federal Circuit Executive was not licensed to practice law in Washington D.C., yet recommended that the complaint be rerouted to him nonetheless. “This kind of conduct does not instill public confidence,” McKibben concluded.

“Leader shareholders hope that the U.S. Supreme Court is above the legal and ethical confusion created by the Federal Circuit’s conduct, and that the court will support small inventor’s patent rights, the law and justice and hear this case.”

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About Leader®

Leader Technologies Incorporated is a software development and marketing company specializing in social networking and unified communications. Its technologies are patented and patent pending. Its brands include [Leader2Leader®](#) for enterprise social networking, [Leader Phone® Pro & Lite](#) Web 2.0 audio conferencing, [Leader Meeting™](#) for web conferencing, [Leader Alert®](#) for alerting services, Leader News® for alerting with news services, and Leader Voice Mail® for remote IP-based voice mail services. Leader provided the primary communications and collaboration system for the Governor of Louisiana in the state’s Hurricane Katrina disaster response. Leader has also provided counterterrorism support and alerting technologies to the Departments of Homeland Security and Defense. In the wake of the Virginia Tech tragedy, Leader Alert® is now deployed with increasing frequency within secondary and higher education for school safety and security applications.

Leader® recently launched the [Leader Phone® iPhone Audio Conferencing App](#) which is available free on the Apple® iTunes App Store.

For background on *Leader v. Facebook*, see [Donna Kline Now!](#) and [Americans For Innovation](#). For additional information, go online to www.leader.com or contact John Needham at (614) 890-1986.

NOTICE: This press release contains opinion and the information should not be relied upon without independent verification.

Source Links:

[1] Petition for Writ of Certiorari, *Leader Technologies, Inc. v. Facebook, Inc.*, No. 12-617 (U.S. Supreme Court Nov. 16, 2012)
<<http://www.scribd.com/doc/113545399/Petition-for-Writ-of-Certiorari-Leader-Technologies-Inc-v-Facebook-Inc-No-12-617-U-S-Supreme-Court-Nov-16-2012-clickable-citations>>.

[2] Shibani Joshi. Interview with Michael McKibben, Chairman & Founder of Leader Technologies, Inc. *Fox Business*, Jul. 16, 2012
<http://video.foxbusiness.com/v/1738073255001/leader-technologies-sues-facebook-for-patent-infringement/?playlist_id=163589>.

[3] This is despite the fact that Canon 2 of the Code of Conduct for United States Judges and Judicial Employees says that judges and judicial employees should “avoid impropriety and the appearance of impropriety in all activities.”
<<http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx>>.

[4] U.S. Supreme Court Docket. Case No. 12-617, Petition for Writ of Certiorari, *Leader Technologies, Inc. v. Facebook, Inc.* (U.S. Nov. 16, 2012)
<<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-617.htm>>.

[5] Liebman, Roy I. “Distributed for Conference at the Supreme Court of the United States.” *Counsel Press*, Oct. 25, 2012
<http://www.counselpress.com/page_blog_single.cfm?bid=11>.

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