

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

REMBRANDT SOCIAL MEDIA, LP,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION
)	
FACEBOOK, INCORPORATED, et al.,)	1:13-cv-158
)	
Defendant.)	
)	

REPORTER'S TRANSCRIPT

MOTIONS HEARING (Via Teleconference)

Thursday, June 6, 2013

BEFORE: THE HONORABLE T.S. ELLIS, III
Presiding

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1 THE COURT: All right. Good afternoon,
2 Ms. Keefe. Again, when you speak, please identify
3 yourself in advance.

4 ATTORNEY KEEFE: This is Ms. Keefe. Thank
5 you, your Honor.

6 THE COURT: And for AddThis.

7 ATTORNEY MCBRIDE: Good afternoon, your
8 Honor. This is Steve McBride. Thank you.

9 THE COURT: All right.

10 MARKMAN RULINGS BY THE COURT

11 THE COURT: Now, first I want to thank you
12 for making yourselves available for this telephone call,
13 the purpose of which is for me to disclose the Markman
14 ruling. The briefs and arguments have been very
15 helpful, so I thank you for those as well.

16 I have heard many judges say, and it's
17 correct, that -- it's generally true that although --
18 although patent cases often involve a great deal of work
19 and are difficult for many judges, judges nonetheless
20 say that a saving grace in patent cases is the typical
21 high quality of the lawyers involved, and this case is
22 no exception to that. So I thank you.

23 Now, the reason I am doing this by telephone
24 is that I don't have the time to develop a timely
25 opinion. I'll have to delay the opinion till I have

1 more time. The so-called rocket docket, which I didn't
2 name, none us here named, but it is the way in which
3 this division is known, imposes a discipline on lawyers
4 and judges as well. In other words, if we expect the
5 case to move along and the lawyers to move it along, we
6 have got to make decisions, and we have to do it in a
7 timely fashion.

8 Now, in this case there are a number of
9 agreed-upon terms, and the order that I will issue will
10 set those terms out that are agreed upon, and the
11 definition. And, of course, you should examine the
12 order carefully to make sure that I have faithfully
13 recorded your agreed-upon definitions. I am not going
14 to -- well, maybe I will, in case I can catch an error,
15 let me run through those very quickly.

16 For the '316 patent, "browser," the
17 definition is a computer program executed by a user
18 system for accessing and viewing web pages.

19 And I give you leave to stop me if I make a
20 mistake.

21 "Cohesive diary page," the definition is a
22 diary page in which the content data and the page design
23 are fully integrated for display.

24 Next, "content data." The definition is
25 information that may be displayed to a user that is

1 independent of the page design.

2 Next, "cover for a diary." The definition
3 is layout or style information that defines, at least in
4 part, the visual appearance of a cohesive diary page
5 independent of the particular content of the page.

6 Next, "diary information." The definition
7 is information, including at least content data, page
8 design and configuration information sent from the diary
9 server from the user system.

10 Next, "diary page." The definition is a
11 page containing content sent by a server to a user
12 system.

13 Next, "diary program." The definition is a
14 computer program for execution by the browser in the
15 user system that generates a cohesive diary page.

16 Next, "page design." The definition is
17 layout or style information that defines at least in
18 part the visual appearance of a cohesive diary page
19 independent of the particular content of the page.

20 Next, "privacy level information." The
21 definition is configuration information that describes
22 or specifies which users or categories of users are
23 permitted to view particular content data on a cohesive
24 diary page.

25 Next, "server." The definition is a

1 computer or other data processing system that provides
2 or manages access to a defined resource or service in a
3 network.

4 Next, "user system."

5 ATTORNEY KEEFE: Your Honor?

6 THE COURT: Yes.

7 ATTORNEY KEEFE: This is Heidi Keefe. I
8 apologize for interrupting.

9 With respect to "privacy level information,"
10 I just wanted to make sure that I heard correctly, it
11 was configuration information that describes or
12 specifies which user, paren "s" end paren, or category
13 of users are permitted to view particular content data
14 on a cohesive diary page.

15 THE COURT: Yes, you're correct, I simply
16 didn't put the "s" in parentheses.

17 ATTORNEY KEEFE: I appreciate it. But you
18 intended for the definition to have the "s" in
19 parentheses; is that correct?

20 THE COURT: That's correct.

21 ATTORNEY KEEFE: Thank you, your Honor.

22 THE COURT: Not because I think it's right,
23 but because I think the parties have agreed to it. I
24 haven't adjudicated that issue.

25 ATTORNEY KEEFE: Thank you, your Honor.

1 THE COURT: All right. But I am glad you
2 interrupted, because I did leave the paren "s" out, but
3 it will be in the order.

4 Next, "server" -- I did "server."

5 Next, "user system." The definition is a
6 computer that executes a browser for use by an end user.

7 Now, for the '362 patent, there are a number
8 of agreements. First, "annotated universal address
9 (AUA)." The definition is information consisting of the
10 universal address and one or more annotations associated
11 with it.

12 Next, "annotation." The definition is
13 information that governs the presentation of or
14 describes a content object.

15 Next, "applet." The definition is program
16 code in any downloadable code format.

17 Next, "AUA database." The definition is a
18 collection of one or more AUAs.

19 Next, "content object." Definition, an
20 identifiable unit of content such as, for example, text,
21 a bookmark, an image, a program, or a movie.

22 Next, "content provider." The definition is
23 a person or entity that provided the content object.

24 Next, "content provider authored
25 restriction." The definition is a requirement specified

1 by a content provider.

2 Next, "dynamically generated page
3 definition." The definition is creating a page
4 definition at the client at the time it is needed.

5 Next, "network data for dynamically
6 presenting the object and the request interface." The
7 definition, data transmitted over a network used to
8 present the object and the request interface at the time
9 of presentation.

10 Next, "page definition." The definition is
11 information that completely defines the appearance of a
12 page.

13 "Presentation context." The definition is
14 layout or style information that defines at least in
15 part the visual appearance of a page independent of the
16 particular content of the page.

17 Next, "request interface." The definition
18 is a user interface permitting a user to make a request.

19 Next is "script." The definition is
20 instructions, with an "s" in parentheses, instruction
21 with an "s" in parentheses, executed by a computer
22 program.

23 Next, "transfer applet." The definition is
24 an applet that establishes a communications link between
25 a client browser and server memory and transfers an AUA

1 from the client browser to an AUA database stored in the
2 server memory.

3 Next, "universal address." The definition,
4 uniform resource locator, paren, URL.

5 That completes the agreed-upon -- the
6 agreed-upon definitions of a variety of terms.

7 Have I omitted any term as to which the
8 parties have agreed on a definition? Mr. Hillman.

9 ATTORNEY HILLMAN: I don't believe so, your
10 Honor.

11 THE COURT: Ms. Keefe?

12 ATTORNEY KEEFE: None that I can see, your
13 Honor.

14 THE COURT: All right.

15 The remaining disputed terms are really
16 three in number. For the '316 patent, it's
17 "configuration information for controlling the behavior
18 of a cohesive diary page."

19 And the second term is -- or phrase or set
20 of phrases, is "assembling the cohesive diary page by
21 dynamically combining the content data and the page
22 design in accordance with the configuration
23 information."

24 And for the '362 patent, it is the term
25 "transfer script."

1 Those are the three remaining terms -- or
2 three terms that remain in dispute. Do I have that
3 correct, Mr. Hillman?

4 ATTORNEY HILLMAN: Yes, your Honor.

5 THE COURT: Ms. Keefe?

6 MS. KEEFE: Yes, your Honor.

7 THE COURT: All right. Now, what I am going
8 to do next is to give you briefly, and it will be brief,
9 what my conclusion is with some but perhaps not all of
10 the reasoning. And I am certainly not going to go into
11 case citations at this point, and I am not going to
12 address all the arguments, but I will hit the high
13 spots.

14 First of all, I will note that in reaching
15 these conclusions I have of course been mindful of the
16 settled Federal Circuit authority that requires courts
17 to follow a hierarchy of evidence in making claim term
18 definitions, beginning with the claim language, then the
19 specification and then the file wrapper or prosecution
20 history, and there are times when extrinsic evidence
21 might be needed, but in this case it isn't needed.

22 So the first step in a claim, in the meaning
23 of a claim term is to examine the claim terms or the
24 claims themselves to see whether the claims themselves
25 disclose the meaning of the disputed term.

1 Now, the two disputed terms under the '316
2 patent all relate to the question whether the filtering,
3 which isn't a term that appears in the patent, but the
4 filtering occurs at the server level or the user level.
5 And by "filtering" we mean use of configuration
6 information, that is use of -- to determine who sees the
7 page, in essence, whether that happens at the server
8 level or the user level, and this is a major dispute in
9 this case.

10 Now, we look first at the patent claims.
11 The patent claims make clear that the configuration
12 information for controlling the behavior of a cohesive
13 diary, all of that is sent from a diary server to a user
14 system. So, in other words, it's sent there.

15 Now, this leads the defendant to make the
16 argument that -- or the defendants to make the argument
17 that the claim language suggests that -- or I guess the
18 argument is that the claim language makes it clear that
19 the -- that the user system does the filtering because
20 that's where the configuration information is sent.

21 Certainly that's an inference that can be
22 drawn from looking at the claim language. But, in my
23 opinion, it is not a conclusive inference. It's not an
24 exclusive inference. It's certainly is an inference.

25 Now, the plaintiff points out, in opposition

1 to it, that there is another reason for sending the
2 configuration information to the user system, and that
3 is it allows the user to make changes in the
4 configuration information, that is, changes in the
5 privacy; who gets to see the page.

6 It's important I think to point out that
7 it's only the owner of the page or somebody authorized
8 by the owner of the page to gets to see this -- or not
9 gets to see it -- gets to make changes to this
10 configuration information. But I don't think that
11 lessens or eliminates the force of the argument. There
12 is another reason for sending it to the user.

13 My conclusion is that the claim language is
14 not determinative of where the filtering takes place,
15 and so I would love to find the answer there but it
16 isn't -- it isn't. I think the -- sending the
17 configuration information to the user system allows the
18 diary owner to change the level, and that's reflected in
19 the specification. There are references to that. In
20 columns 3 and in columns 12 there are references to
21 that.

22 The defendants also argued that use of the
23 phrase in the claims, "assembling the cohesive diary
24 page by dynamically combining the content data and the
25 page design in accordance with the configuration

1 information," suggests that the filtering is done at the
2 user level.

3 But I don't think it does that conclusively.
4 It doesn't preclude that the actual filtering is done,
5 or can be done, at the server level.

6 So in the end I conclude that the claim
7 language itself is not dispositive of whether the patent
8 is limited to filtering at the user level. So, in a
9 circumstance where the claim language is not sufficient
10 to resolve the patent claim dispute, the next step in
11 the analysis is to go to the specification.

12 And you all are well familiar with the
13 Phillips case, and what the Phillips case says about the
14 value of the specification.

15 And it is valuable, although, I might add,
16 it would be valuable if it were more clearly and
17 carefully and written. But in any event, my views on
18 claim interpretation and the reigning legal principles
19 are not entirely in sync, but I am bound by what the
20 Federal Circuit says, not by what I think would be a
21 more sensible way to do it.

22 I just spoke at Duke, at a group there, to a
23 meeting, and I had very different views. But I have to
24 make very clear that my views on how the matter should
25 be done are irrelevant because I am governed by the

1 Federal Circuit, and I have to apply the law as it
2 exists.

3 But suffice it to say, is that much of the
4 problem -- many of the problems that I have as a judge
5 in making claim term constructions and determinations
6 are attributable to the applicant's deliberate
7 ambiguities or deliberate insertion of ambiguities in an
8 effort to make the patent sweep as broadly as possible,
9 and I find that, and I have indicated this on several
10 occasions, ambiguities ought to be construed against the
11 person who wrote it, contract law, black letter law.
12 And when you are getting a monopoly from the government
13 that probably ought to be a good rule.

14 But that isn't the law. However sensible I
15 may think my views are, they are not the law. And I am
16 well familiar with that, and I have to be very careful
17 that I don't allow any views that I might have interfere
18 with my duty to apply the law as it is provided by the
19 Federal Circuit.

20 So we go to the specification. All right.
21 Now, the specification, I think I am looking at column,
22 let's see, I think I am looking at column 12. I got it
23 Xeroxed -- by the way, my thanks to you both for sending
24 me these large -- in fact, let me have this one -- these
25 large patents. They are very helpful. In fact, they

1 are so helpful I have made a note that in all future
2 cases I am going to ask that this be done.

3 We don't have the ability to do this here at
4 the courthouse, and I am told by my clerks who have
5 worked at law firms that it's not that big a thing for a
6 law firm to do, and that you all do have the ability to
7 do these things.

8 So I thank you for doing it, and I hope
9 they're right in telling me that this didn't put you to
10 a lot of work and expense because I could then go out,
11 just buy a magnifying glass and use that. But this is
12 much better.

13 Now, let me see what page I am going to. I
14 am going to -- or what column I am going to. It's
15 column 18, as you all know because you focused a lot of
16 attention and argument on it. Column 18, at about line
17 44 begins with the sentence that says:

18 While the invention has been
19 described in conjunction with a specific
20 embodiment, it is evident that many
21 alternatives, modifications and variations
22 will be apparent to those skilled in the art
23 in light of the foregoing description.

24 Well, we don't know what a person of
25 ordinary skill in the art would be or who that would be

1 and what would be evident to them because we can't
2 listen to testimony on that, at least not now. Maybe in
3 a year or so we will.

4 But, in any event, what that sentence says
5 is that, look, the specific embodiment which involves a
6 filtering at the user level, is not -- is not limited.
7 The invention isn't limited to that. Many alternatives
8 and modifications and variations will be apparent.

9 Well, if I had testimony from a person of
10 ordinary skill in the art, I suppose one of the first
11 questions is whether one of those that would be apparent
12 would be use of the configuration information to do the
13 filtering at the server level.

14 But, in any event, it goes on, and it goes
15 on down to say:

16 Moreover, some or all of the
17 processing and selection of content --
18 content could be performed on the diary
19 server --

20 so, here they are talking about doing something at the
21 diary server, namely the processing and selection of
22 content. And by "processing and selection of content,"
23 I take that to include use of configuration information
24 at the server level to do the filtering.

25 (Continuing) -- thus saving the

1 amount of data that must be transferred to
2 the browser.

3 So, in other words, you would not send as
4 much information to the browser if you did your
5 filtering at the server level. So the specification
6 specifically acknowledges doing -- filtering at the
7 server level is a variation or alternative to the
8 preferred or the single embodiment provided.

9 And then it goes on to say, "Similarly, all
10 the HTML generation could be performed by the diary
11 server."

12 And then it's followed by the sentence,
13 "This might lower the bandwidth requirement -- required
14 and would simplify the transfer mechanism."

15 In other words, if you did all the HTML
16 generation at the diary server, you wouldn't have to
17 send so much to the user.

18 And it goes on to say, "This" -- now, when
19 it says "this," there was some argument about what that
20 referred to. I think it is clear that it refers to the
21 HTML generation. If you do the HTML generation at the
22 diary server, that would lower the bandwidth required,
23 which it would, and would simplify the transfer
24 mechanism.

25 "However," it goes on to say, "when

1 envisioned in an application of the invention where
2 millions of users use a diary, this," again, "places an
3 unacceptable burden on the diary servers.

4 The "this" in that sentence, I think,
5 continues to refer to the HTML generation, and so that's
6 what it says places an unacceptable burden on the diary
7 servers.

8 The use of the word "unacceptable" I
9 fastened on. I think it's a careless use of the word.
10 It certainly is a more substantial burden.
11 Unacceptable, I am not sure. But, in any event, that's
12 what they say.

13 "In the described embodiment, the processing
14 capabilities of user systems are used to avoid this
15 problem."

16 That's in the described embodiment. But
17 then they go on to say, "Accordingly, it is intended to
18 embrace all such alternatives."

19 You know, one of the most difficult problems
20 I have with -- not my current law clerks -- is not being
21 clear about pronouns. Now, it says here, "Accordingly,
22 it is intended to embrace all such alternatives." I
23 think the "it" there, it clearly means the patent.

24 Now, why didn't they say "the patent"? I
25 can't tell you. But it says, "it is intended." I take

1 that to mean the patent "is intended to embrace all such
2 alternatives, modifications and variation that fall
3 within the spirit and scope of the appended claims and
4 equivalence."

5 So, in any event, I conclude from the
6 specification, first of all, that filtering at the
7 server is disclosed in the specification, and I conclude
8 from the specification, moreover, that the disclosure of
9 filtering at the server in the specification is
10 explicitly embraced within the scope of the patent as an
11 alternative.

12 Now, this doesn't end the dispute because
13 the argument that I found up at -- to this point of
14 course I am with the plaintiff that the patent does
15 not -- is not limited to filtering at the user.

16 Neither the claim language nor the
17 specification does that. Indeed, as I have indicated,
18 the specification seems clearly to embrace, to include
19 within the scope of the claimed invention the filtering
20 at the server level.

21 Now, there is a further argument, and it
22 stopped me cold because I thought it was a very
23 significant argument. And that is that in the course of
24 distinguishing, as it had to, a prior art patent, the
25 applicant for the '316 in effect said, I don't claim

1 filtering at the server level and that that was
2 necessary to get by the patent.

3 I thought this was a very significant
4 argument because this is -- this is one of those rules
5 that I think is really quite sensible. You can't get a
6 patent by saying that a piece of prior art isn't covered
7 by your patent, and then turn around later on and say,
8 oh, yes, but that area of the prior art is within the
9 patent. All right.

10 Now, during the patent prosecution process
11 the patent examiner rejected some claims in the '316
12 patent as being anticipated by the Freeman patent. I
13 don't -- was it -- '227 patent. Yes.

14 And the applicant for the '316 distinguished
15 the Freeman patent, and the defendants here claim that
16 the distinction that the applicant invoked demonstrates
17 that the '316 filtering occurs, must occur at the user
18 level rather than the server level.

19 Well, I looked at this carefully because I
20 consider it to be unimportant argument, and I can say
21 with complete confidence that if the applicant had
22 indeed said in order to get over the Freeman patent I am
23 pointing out to you that the filtering, the use of the
24 configuration information is all done at the user level,
25 not at the server level and that's how I get by the

1 Freeman patent, then it wouldn't matter totally to me
2 how much the configure -- how much the specification
3 said because they're changing it, and my recollection is
4 that lots of this happens without the specification ever
5 getting changed.

6 I have seen this again and again. I don't
7 know why in the PTO they don't require -- they do, but
8 they don't succeed always in ensuring that the
9 specification is consistent with positions that were
10 taken in the course of the prosecution.

11 But anyway, so I looked at this carefully.
12 The applicant for the '316 patent distinguished Freeman
13 in a number of ways, pointing out that the operating
14 system in Freeman remains on the server, and the user's
15 computer simply displays the web page.

16 The '316 patent, of course, the user system
17 receives the diary program that is run by the browser in
18 the user system, and the browser then receives diary
19 information comprising content data and configuration
20 information. I mean clearly the user has the
21 configuration information.

22 It could do with that configuration
23 information the filtering, but it isn't required to
24 either by, so far, as I found, either by the claims
25 themselves or by the specification.

1 Indeed, in the specification I found that it
2 explicitly embraces filtering at the server stage. So
3 the program at the browser in the '316 receives the
4 diary information comprising content data and
5 configuration information, and the program displays at
6 least one diary page in accordance with the received
7 diary information, as the claim says.

8 The applicant went on to point out that the
9 36 -- well, that's not from the claim. I am quoting
10 from the office action -- from the letter in response to
11 the office action, but it's in both.

12 The applicant went on to point out that the
13 '316 patent separates the content data from the format
14 in which it is presented allowing one to be changed
15 without the others. So that's how the Freeman patent
16 was distinguished.

17 But in doing that, I didn't see, and I
18 concluded that they did not disclaim any embodiment in
19 which the filtering occurs at the server level. The
20 file wrapper states that in the '316 patent the diary
21 program on the user's computer receives the diary
22 information comprising content data and configuring
23 information, and it displace the diary page in
24 accordance with the diary information.

25 Of course, an inference could be that the

1 diary program uses the configuration information to
2 filter the content data on the user's computer, but it
3 doesn't disclaim the possibility that filtering can
4 occur at the server level.

5 It doesn't disclaim the possibility that the
6 diary program receives the content data that has already
7 been filtered and combines that content data with the
8 page layout information on the user's computer to create
9 the page. So whether you did the filtering at the
10 server or at the user, the program would create the
11 diary page in accordance with the received diary
12 information.

13 So, in the end, I conclude that although --
14 although the claim terms do refer to sending the
15 configuration information to the user, that doesn't end
16 the dispute. That certainly suggests that it can be
17 done at the user level but it doesn't require it because
18 there is it another reason for sending the configuration
19 information to the diary page owner.

20 So then I go to the specification as the law
21 requires and as I have already indicated. There I find
22 that the specification not artfully, inartfully
23 discloses that it embraces as a variation that filtering
24 or use of the configuration data can also be done at the
25 server level.

1 And then the argument that the defendant, I
2 beg your pardon, that the applicant is somehow estopped
3 from claiming that in virtue of what it gave up to
4 overcome a piece of prior art, my conclusion after
5 studying that documentation is that the distinguishing
6 of the Freeman patent did not rest upon any disclaimer
7 or giving up of filtering at the server level.

8 So, in summary, I think that the definition
9 offered by Rembrandt prevails on the two terms that
10 involve the use of the configuration data.
11 Specifically, what that means is that -- and I'll read
12 those now, "Configuration information for controlling
13 the behavior of a cohesive diary page." That's the
14 language from the claim, and the definition is
15 "Information that determines what information will be
16 displayed to a user who is viewing a cohesive diary
17 page."

18 And the next term that involves the same
19 filtering issue that is the locus of the filtering is
20 "Assembling the cohesive diary page by dynamically
21 combining the content data and the page design in
22 accordance with the configuration information."

23 And the definition is "Forming the cohesive
24 diary page to be displayed by combining at the time of
25 display the content data with the page design to

1 generate a page definition that is in compliance with
2 the configuration information."

3 Now, that leaves one final issue, and that
4 is the definition of "transfer script." And here the
5 parties' dispute focuses on whether the term "transfer
6 script" should specify that the transfer script is only
7 executed in response to a request to add an AUA.
8 Plaintiff argues that the claims make no such limitation
9 and that a transfer script can be executed before any
10 request is made to an AUA to the AUA database.

11 The defendants respond that the procedure
12 for running the transfer script in advance of a request
13 to add an AUA is not taught, supported or suggested
14 anywhere in the intrinsic record, and it's illogical
15 because under this definition a transfer script would be
16 executed even when no transfer occurred. And they also,
17 defendants also argue that it's contradicted by the
18 embodiment in the specification.

19 In the end -- well, before I get there, I
20 think it's important to remember that the scripts are
21 programs -- applets are the same thing -- the parties
22 agree on the meaning of "script," so the dispute here is
23 really what is, what is the function of "transfer"
24 there.

25 Transfer is used in several location in the

1 claims, and what the defendants want to do is to read
2 that the request to add an AUA, it's a trigger for
3 execution of the script that the plaintiff says is not
4 in the claims anywhere.

5 In the end, I've concluded that that is the
6 correct result, that the definition offered by the
7 plaintiff is correct, because the claims do not require
8 that the transfer script only be executed in response to
9 a request to add an AUA to the AUA database. So the
10 "transfer script" is adequately defined as a script that
11 generates a request for a transfer applet from server
12 memory that is executed by a browser.

13 That completes what I wanted to accomplish
14 today in this telephone call.

15 Let me repeat, I am doing it by telephone
16 because I do not have the time to prepare an opinion on
17 this at this time. I will, however, in the fullness of
18 time, if this matter is not otherwise resolved, prepare
19 and file a memorandum opinion.

20 But I do think the parties, because we are
21 proceeding onward, are entitled to know what the result
22 of my -- what my determination is, the result of my
23 consideration of their arguments, and so that's why I
24 wanted to give it to you orally. The matter is being
25 transcribed. Mr. Rodriguez is about to head off to,

1 where is it, France or --

2 THE COURT REPORTER: Belgium.

3 THE COURT: Belgium. And when do you go?

4 THE COURT REPORTER: July.

5 THE COURT: In July.

6 But I am sure if you communicate with
7 Mr. Rodriquez he can give you a transcript of this
8 telephone call before he leaves for Belgium where he is
9 competing in the world competition for court reporters.
10 He's come out as high as fourth in the past, and he has
11 traveled to exotic -- I don't think he cares about where
12 he places. I think he goes to Bangkok and Paris and
13 Belgium and wherever -- South of France, wherever else
14 he goes, for the pleasure of going.

15 But in any event, he will give you a
16 transcript promptly if you wish to have one. I'll enter
17 an order. It will probably enter tomorrow, be issued
18 tomorrow, and be available to you online tomorrow.

19 And I think the next matter on the agenda --
20 I also have an opinion in the works that I will issue
21 perhaps sometime within the next few days on the pending
22 issues and the motion to dismiss. And I will get that
23 out as soon as I am able to do that.

24 What's the next matter on the agenda in this
25 case?

1 I don't think -- the final pretrial is
2 scheduled for when, Mr. Hillman, Ms. Keefe?

3 ATTORNEY KEEFE: This is Ms. Keefe.
4 August 1st, your Honor.

5 THE COURT: Well, then, that's our next
6 meeting. And I will look forward to seeing you then.
7 But I wanted to get this done so that you could proceed
8 with using these definitions for whatever purposes you
9 need, either deposition testimony, expert testimony,
10 settlement, or whatever.

11 And so I thank you for making yourselves
12 available this afternoon, and I thank you again for your
13 briefs and the large patents.

14 Anything further this evening, Mr. Hillman?

15 ATTORNEY HILLMAN: No, your Honor, thank you
16 very much for spelling this out for us.

17 THE COURT: Ms. Keefe?

18 ATTORNEY KEEFE: No, your Honor. Thank you.

19 THE COURT: No, you don't have to thank me.

20 Mr. Hillman, I can understand would thank me. But I
21 should say, Ms. Keefe, I thought your arguments were
22 very good, and if I had a patent, I would retain you.

23 ATTORNEY KEEFE: Can I thank you for that,
24 your Honor?

25 THE COURT: That, you can thank me for. You

1 earned that.

2 ATTORNEY KEEFE: Thank you. Thank you, your
3 Honor, very much.

4 THE COURT: I thank counsel. Good night.

5 (Telephone conference concluded at

6 4:58 p.m.)

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CERTIFICATE

I, MICHAEL A. RODRIQUEZ, an Official Court Reporter for the United States District Court, in the Eastern District of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the motions hearing in the case of REMBRANDT SOCIAL MEDIA, LP, v. FACEBOOK, INCORPORATED, et al.

I further certify that I was authorized and did report by stenotype the proceedings in said motions hearing, and that the foregoing pages, numbered 1 to 32, inclusive, constitute the official transcript of said proceedings as taken from my machine shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this _____ day of _____, 2013.

Michael A. Rodriguez, RPR/CM/RMR
Official Court Reporter