



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

August 7, 2013

VIA U.S. MAIL

Re: Freedom of Information Act (FOIA) Request No. F-13-00218

Dear [REDACTED]

The United States Patent and Trademark Office (USPTO) FOIA Office received your e-mail dated July 09, 2013 in which you requested, under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, a copy of:

Re: USPTO FOIA Request re Leader Technologies, Inc. v. Facebook, Inc., U.S. Pat No. 7,139,761 and 3rd Reexam No. 95/001,261

- (1) Patent Office Employee Conflict of Interest Information: I request the following information regarding the U.S. Patent Office employees listed following:
- (a) Full biographical disclosures, including updates, from Jan. 1, 2004 – present;
 - (b) Any and all conflicts of interest disclosures made by the person, including rationale and description of the matter, from Jan. 1, 2004 – present;
 - (c) Any and all recusals by the person, including rationale and description of the matter, from Jan. 1, 2004 – present; and
 - (d) All required disclosures of financial holdings from Jan. 1, 2004 – present.

U.S. Patent Office employees for whom the information is requested:

- (i) Former Director David J. Kappos
- (ii) Deputy FOIA Counsel Kathryn Siehndel
- (iii) Administrative Judge Stephen C. Siu
- (iv) Administrative Judge James R. Hughes
- (v) Administrative Judge Meredith C. Petravick
- (vi) Administrative Judge Alan R. MacDonald
- (vii) Administrative Judge Catherine Timm
- (viii) Administrative Judge Jackie W. Bonilla
- (ix) Administrative Judge Jason V. Morgan

- (x) Administrative Judge Mike Strauss
- (xi) Administrative Judge George Best
- (xii) Administrative Judge Matt Clements
- (xiii) Administrative Judge Lynne Pettigrew
- (xiv) Administrative Judge Bart A. Gerstenblith
- (xv) Administrative Judge Kit Crumbley
- (xvi) Administrative Judge Stacey White
- (xvii) Administrative Judge Hung J. Jung

(2) A.F.L.C.T.A.C.A.F.C. (Assoc. of Former Law Clerks and Technical Assistants for the United States Court of Appeals for the Federal Circuit).

- (a) Complete list of patent office employees who are/have been a member and/or participated in events sponsored by this organization, from 2008 to the present.
- (b) Program materials created by or on behalf of this organization and made available to patent office employees, in any form.

(3) Executive Communication Privilege.

Any and all Freedom of Information Act (FOIA) inquiries, Congressional inquiries, and Inspector General inquiries to the U.S. Patent Office where executive communication privilege was invoked (see *Loving v. Dep't of Defense*, 550 F.3d 32, 37 (D.C. Cir 2008 and related statutes) to prevent disclosure of the information requested, from Jan. 1, 2004 – present.

In our July 9, 2013 telephone call to clarify this request, you indicated that you intended your requests to be limited to records related to the subject line of your request, regarding “Leader Technologies, Inc. v. Facebook, Inc., U.S. Pat. No. 7,139,761 and 3rd Reexam No. 95/001,261,” where applicable.

Item 1

Regarding Item 1 of your request, the USPTO identified 67 pages of documents that are responsive to parts (a), (b), and (c). A copy of this material is enclosed. There are no records for David Kappos or Kathryn Siehndel. Records concerning required disclosures of financial holdings, part (d) of the request, are withheld in full pursuant to Exemption (b)(6) of the FOIA. 5 U.S.C. § 552(b)(6).

The financial disclosures are withheld in full pursuant to Exemption (b)(6) of the FOIA, which permits the withholding of “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The term “similar files” has been broadly construed to cover “detailed Government records on an individual which can be identified as applying to that individual.” See *Dep’t of State v. Washington Post*, 456 U.S. 595, 601 (1982). Exemption (b)(6) requires a balancing of an individual’s right to privacy against the public’s right to disclosure. See *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Multi Ag Media LLC v. USDA*, 515 F.3d 1224, 1228 (D.C.

Cir. 2008). The burden is on the requester to establish that disclosure would serve the public interest. See Bangoura v. Dep't of the Army, 607 F. Supp. 2d 134, 148-49 (D.D.C. 2009).

Here, the requested information is directly tied to an individual's personal financial history, is part of USPTO personnel files, and is information in which individuals have a significant privacy interest. Release of personal financial information could result in fraud or abuse by unauthorized individuals. Further, the withheld information does little to shed light or contribute significantly to public understanding of the operations or activities of the USPTO. When balancing the public interest of release against individual privacy interest, the Supreme Court has made clear that information that does not directly reveal the operations or activities of the federal government fall outside the ambit of the public interest. See Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 775 (1989). Your FOIA request does not assert a public interest that outweighs the privacy interest, nor is a public interest otherwise evident. Since the privacy interest in this information is greater than any identifiable public interest, the FOIA requires that the information be withheld.

Item 2

Regarding Item 2, part (a) of your request, the USPTO has no records. As for part (b), the USPTO requires clarification of this portion of the request. As it currently reads, your request does not provide sufficient information to permit the agency to formulate a reasonable search for responsive documents. We kindly request a clarification of the records you seek. See 37 C.F.R. § 102.4(b).

The FOIA imposes two key requirements on requesters: they must "reasonably describe" the records sought and must make requests in accordance with an agency's published FOIA regulations. 5 U.S.C. § 552(a)(3)(A). A description of a requested record is sufficient if it enables a professional agency employee familiar with the subject area to locate the record with a "reasonable amount of effort." See Frank v. U.S. Dep't of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996) (stating that an agency is not required to "dig out all the information that might exist, in whatever form or place it might be found, and to create a document that answers plaintiff's questions").

Your request fails to identify possible custodians, a system or records, or a subject matter for the records sought in Item 2, part (b). Defining a specific universe of records desired should provide serviceable search parameters for USPTO subject-matter experts and help us respond most effectively and efficiently to your request. If you wish to pursue this part of your request, please resubmit your request and more clearly define the records you seek by identifying potential custodians, systems of records, subject matter, or other limiting parameter.

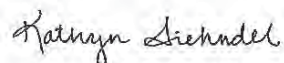
Item 3

Regarding Item 3 of your request, the USPTO has no records.

* * *

You have the right to appeal this initial decision to the Deputy General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. An appeal must be received within 30 calendar days from the date of this letter. See 37 C.F.R. § 102.10(a). The appeal must be in writing. You must include a copy of your original request, this letter, and a statement of the reasons that form the basis for the appeal. Both the letter and the envelope must be clearly marked "Freedom of Information Appeal."

Sincerely,



Kathryn Siehndel
USPTO FOIA Officer
Office of General Law

Enclosure

	A	B	C	D	E	F
1	Position	Section	Supervising judge	Name (Lastname, Firstname, Initial)	Conflicting companies (please enter each company in a separate cell)	Date that can be removed
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