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## Facebook May Face Patent Challenge in Phila. Federal Court

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Facebook, the wildly popular social networking site, may soon be squaring off in federal court in Philadelphia to defend itself against claims that the site's design infringes on a patent that was filed several years before Facebook was launched in 2004.

In the suit, plaintiff Cross Atlantic Capital Partners, also known as XACP, claims that it holds the rights to a patent for an Internet-based "community for users with common interests to interact in" that was invented in 2000.

If XACP's suit is successful, Facebook could be ordered to pay millions in damages and possibly face an injunction that could shut the site down.

Facebook, which was launched at Harvard University by then-student Mark Zuckerberg and several of his dormmates, was initially limited to college students in its first few years, but expanded to the public in 2006 and has grown rapidly, especially in the past two years when users over 35 began to join, swelling its membership from 42 million in 2008 to more than 103 million in 2009.

The company also recently began turning a profit and has been rumored to be gearing up for going public with an initial public offering in which some analysts predict the company could be valued at up to \$5 billion. But before an IPO, the patent litigation would likely have to be resolved.

The case, *Cross Atlantic Capital Partners Inc. v. Facebook Inc.*, was filed in 2007 and was nearly ready to go to trial in 2008 when Facebook asked for a stay of the litigation in order to pursue an "inter partes" re-examination of the patent before the U.S. Patent and Trademark Office.

In September 2009, the PTO examiners



Tom Duffy

issued a decision and clearing the way for Facebook to challenge the decision before the Patent Office Board of Patent Appeals.

Now plaintiffs attorneys Frederick A. Tecce of McShea Tecce and Thomas J. Duffy of Duffy & Partners say they are poised to file a motion to have the case reopened.

Anticipating that the litigation will intensify in the lead up to the trial, Tecce and Duffy have now joined forces with powerhouse patent litigator James H. Wallace Jr. of Wiley Rein in Washington, D.C.

Wallace garnered international attention when he led the team that secured a \$612.5 million patent infringement settlement with Research in Motion Ltd., the maker of BlackBerry wireless e-mail devices, on behalf of his client NTP Inc.

Canadian-based RIM was looking down the barrel of a federal judge's injunction that threatened to shut down the popular wireless e-mail service for its 3 million Blackberry users when it struck a deal in which NTP granted RIM the right to keep running its BlackBerry business.

In an interview, Duffy said Wallace "brings tremendous expertise" in patent litigation, and that the plaintiffs team will also include two of Wallace's partners, Kevin P. Anderson and Gregory R. Lyons.

Facebook is represented by attorneys Heidi L. Keefe and Mark R. Weinstein of Cooley Godward & Kronish in Palo

Alto, Calif., along with Alfred W. Zaher and Dennis P. McCooe of Blank Rome in Philadelphia.

McCooe declined to be interviewed about the litigation.

According to court papers, a patent application was filed in February 2000 by four men — Jamey Harvey, Andrew Fegley, Matt Hulan and Robert Dekelbaum — that described an invention of software and hardware that would establish "novel systems and methods for creating a community for users with common interests to interact in."

The suit alleges that initial development of the Facebook Web site began "no earlier than December 2003."

So far, the litigation has proceeded on two tracks, with XACP setting out to prove that Facebook infringes its patents and Facebook focusing most of its efforts on proving that XACP's patents are invalid because of "prior art," a term that essentially means the claimed invention was nothing new and therefore not patentable.

Tecce said that Facebook will now be legally bound by the findings of the Patent Office examiners and cannot lodge any defenses premised on invalidity.

Although Facebook still has a right to pursue an appeal from the examiners' decision, Tecce said, the plaintiffs team will be asking U.S. District Judge John R. Padova to lift the stay and allow the case to proceed to trial. •

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