

Trial underway in patent case against Facebook

June 11 2014, by Matthew Barakat

Facebook infringed on patents held by a Dutch computer programmer who tried to launch a similar site called "Surfbook" more than a decade ago, according to a lawsuit heard by a federal jury Wednesday.

The civil trial was underway in U.S. District Court in Alexandria, where [social media](#) giant Facebook is being sued by a holding company called Rembrandt Social Media.

The lawsuit alleges that a Dutch computer whiz, Joannes Van Der Meer, filed for patents in 1998, claiming methods for running a web-based personal diary. The patents were issued in 2001 and 2002, before Facebook debuted in 2003.

But Van Der Meer's website, Surfbook, never got off the ground. Van Der Meer died in 2004.

Menlo Park, California-based Facebook says the patents should never have been issued to Van Der Meer. The company argues that the ideas and methods put forward in Van Der Meer's patents were obvious to people in the trade.

The company fought unsuccessfully for more than a year to keep the case from getting to a jury. And it is unusual for patent-infringement lawsuits to make it all the way to a [federal jury](#) trial. Jason Rantanen, a law professor at the University of Iowa who specializes in [patent law](#), said that roughly one percent of the thousands of infringement lawsuits

filed every year end up in that group.

Facebook, a frequent target of patent lawsuits, has typically been successful in fending them off. Rantanen said he could find only one other case where Facebook was the primary defendant in a patent-infringement trial that went to a jury. Facebook won that case.

Once a case gets to a jury, though, it becomes unpredictable, Rantanen said.

One factor that may work in Facebook's favor is what is known in patent law as "hindsight bias," Rantanen said. Jurors looking back on the rapidly evolving history of social media and Facebook's ubiquitous status may conclude that the development of websites like Facebook was inevitable and that the ideas in Van Der Meer's patents weren't unique.

The plaintiff "has to overcome the tendency to say, 'Hey, it was all going in this direction anyway,'" Rantanen said.

Another factor in Facebook's favor is a pretrial ruling from Judge T.S. Ellis III that bars Rembrandt's expert on potential damages from testifying. As a result, it is unclear what kind of judgment Rembrandt could win if the jury finds that Facebook has infringed. In court papers, though, Facebook has expressed concern that it could still be subject to millions of dollars in damages.

In the courtroom, more than 30 three-ring binders stuffed with legal documents pertaining to the case line Judge Ellis' desk, while a jury of four women and three men sort through dense testimony about software code and data configuration. Teams of lawyers from some of the nation's top patent-law firms clog the well of the courtroom.

An expert testifying for the plaintiff, University of Maryland professor

Jennifer Golbeck, said the technical aspect of the infringement centers on a technology used by Facebook called Bigpipe, which speeds the way Web pages are loaded.

More generally, Rembrandt says features on Facebook, including the "like" and "share" buttons, as well as adjustable privacy settings were all anticipated under Van Der Meer's patents.

"Although Mark Zuckerberg did not start what became Facebook until 2003, it bears a remarkable resemblance, both in terms of its functionality and technical implementation, to the personal web page diary that Van Der Meer had invented years earlier," Rembrandt's lawyers wrote in their complaint.

Rembrandt, according to its website, is a company that specializes in filing lawsuits on behalf of patent holders. It has been derided by critics as a "patent troll" that tries to extort hefty settlements from successful companies by digging up obscure [patents](#) and claiming infringement.

Neither Rembrandt nor Facebook returned calls seeking comment.

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