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 13 LINKEDIN CORPORATION

14
 15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18 EIT HOLDINGS, LLC, a Delaware company
 19
 20 Plaintiff and Counterclaim Defendant,
 21
 22 v.
 23 LINKEDIN CORPORATION, a Delaware
 24 corporation
 25
 26 Defendant and Counterclaim Plaintiff.

Case No. 5:11-cv-02465-PSG

**DEFENDANT AND COUNTERCLAIM
 PLAINTIFF LINKEDIN CORPORATION'S
 ANSWER AND COUNTERCLAIMS TO
 PLAINTIFF AND COUNTERCLAIM
 DEFENDANT EIT HOLDINGS, LLC'S
 COMPLAINT**

1 Defendant and Counterclaim Plaintiff LinkedIn Corporation (“Defendant”) responds as follows to
2 the Complaint for Patent Infringement.

3 **THE PARTIES**

4 1. Defendant lacks sufficient knowledge or information to form a belief as to the allegations
5 in this paragraph and, on that basis, denies those allegations.

6 2. Defendant admits that it is a Delaware corporation with a principal place of business in
7 Mountain View, CA, and admits that, in this litigation, it can be served through Ryan Kent, Durie Tangri
8 LLP, 217 Leidesdorff Street, San Francisco, CA 94111.

9 **JURISDICTION AND VENUE**

10 3. Defendant admits that Plaintiff asserts a claim for infringement of a United States patent,
11 that this action arises under the patent laws of the United States, and that jurisdiction is properly based on
12 35 U.S.C. §271 and 28 U.S.C. §1338(a).

13 4. Defendant denies that it has committed and/or induced acts of patent infringement in this
14 district. Defendant admits that it transacts or has transacted business in this judicial district and that
15 venue is proper in this district.

16 **PATENT INFRINGEMENT COUNT**

17 5. Admitted.

18 6. Defendant admits that the U.S. Patent and Trademark Office issued U.S. Patent No.
19 5,828,837 (“the ’837 patent”) entitled “Computer Network System and Method for Efficient Information
20 Transfer,” but lacks sufficient knowledge or information to form a belief as to the remaining allegations
21 of this paragraph and, on that basis, denies the remainder of the allegations in this paragraph.

22 7. Denied.

23 8. Defendant lacks sufficient knowledge or information to form a belief as to the allegations
24 in this paragraph and, on that basis, denies those allegations.

25 9. Defendant admits that it has a website that provides information to users and permits users
26 to create an account that has a user name associated with the account. Defendant admits that it receives
27 information from users when users register to create an account and stores information about registered
28

1 users, and that it provides web pages to registered users that contain advertisements, additional content or
2 information about specific products. Defendant admits that registered users view its website from a
3 device capable of accessing the internet. Defendant lacks sufficient knowledge or information to form a
4 belief as to the remaining allegations of this paragraph and, on that basis, denies the remainder of the
5 allegations in this paragraph.

6 10. Denied.

7 11. Denied.

8 **AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Non-Infringement)**

11 12. Defendant incorporates by reference the responses to the allegations set forth in
12 paragraphs 1 through 11.

13 13. Defendant does not infringe and has not infringed any valid claim of the '837 patent.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Invalidity)**

16 14. Defendant incorporates by reference the responses to the allegations set forth in
17 paragraphs 1 through 11.

18 15. The claims of the '837 patent are invalid for failure to comply with one or more of the
19 requirements of Title 35 of the United States Code including, but not limited to, Sections 101, 102, 103,
20 and 112.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Failure to Mark)**

23 16. Defendant incorporates by reference the responses to the allegations set forth in
24 paragraphs 1 through 11.

25 17. EIT Holdings LLC's ("EIT") patent claims are barred in whole or in part by its failure to
26 provide adequate notice under 35 U.S.C. §287.

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 18. Defendant incorporates by reference the responses to the allegations set forth in
4 paragraphs 1 through 11.

5 19. EIT's requested relief is barred in whole or in part by its own unclean hands.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **(Laches)**

8 20. Defendant incorporates by reference the responses to the allegations set forth in
9 paragraphs 1 though 11.

10 21. EIT's claims are barred in whole or in part by the doctrine of laches.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(Prosecution History Estoppel)**

13 22. Defendant incorporates by reference the responses to the allegations set forth in
14 paragraphs 1 through 11.

15 23. EIT's patent claims are barred in whole or in part by the doctrine of prosecution history
16 estoppel.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 **(Prior Art Estoppel)**

19 24. Defendant incorporates by reference the responses to the allegations set forth in
20 paragraphs 1 though 11.

21 25. EIT's patent claims are barred in whole or in part by the doctrine of prior art estoppel.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Time Limitation on Damages)**

24 26. Defendant incorporates by reference the responses to the allegations set forth in
25 paragraphs 1 though 11.

26 27. The relief EIT seeks is barred in whole or in part by the time limitation on damages set
27 forth in 35 U.S.C. § 286.

1 **COUNTERCLAIMS**

2 Defendant-Counterclaim Plaintiff LinkedIn Corporation, (“Defendant”) hereby pleads the
3 following counterclaims against Plaintiff-Counterclaim Defendant EIT Holdings LLC (“EIT”).

4 **JURISDICTION AND VENUE**

5 1. LinkedIn Corporation is a Delaware corporation with a principal place of business in
6 Mountain View, CA.

7 2. In its counterclaims, Defendant seeks declarations of invalidity and non-infringement of
8 U.S. Patent No. 5,828,837 (“’837 patent”). As such, jurisdiction is proper pursuant to the Federal
9 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, under federal question jurisdiction pursuant to
10 28 U.S.C. §§ 1331 and 1338(a), and as arising under the Patent Laws of the United States, Title 35 of the
11 United States Code.

12 3. This Court has personal jurisdiction over EIT because, among other things, it has
13 consented to jurisdiction by filing the instant case.

14 4. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.

15 **FIRST COUNTERCLAIM FOR RELIEF**

16 **(Declaratory Judgment of Non-Infringement of the ’837 patent)**

17 5. Defendant realleges and incorporates by reference paragraphs 1 through 4.

18 6. As a result of the charges of infringement against Defendant, an actual controversy exists
19 as to infringement of the ’837 patent.

20 7. Defendant has not infringed, and is not now infringing, any valid claim of the ’837 patent.

21 8. Defendant has not caused others to infringe, and is not now causing others to infringe, any
22 valid claim of the ’837 patent either willfully, recklessly, or otherwise.

23 **SECOND COUNTERCLAIM FOR RELIEF**

24 **(Declaratory Judgment of Invalidity of the ’837 Patent)**

25 9. Defendant realleges and incorporates by reference paragraphs 1 through 4.

26 10. As a result of the charges of infringement against Defendant, an actual controversy exists
27 as to the validity of the ’837 patent.

1 **CERTIFICATE OF SERVICE**

2 I certify that all counsel of record is being served on June 21, 2011 with a copy of this document
3 via the Court's CM/ECF system.

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11 Dated: June 21, 2011

/s/ Ryan M. Kent
Ryan M. Kent