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 LinkedIn Corporation

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13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN JOSE DIVISION

17 EIT HOLDINGS LLC, a Delaware company  
 18 Plaintiff,  
 19 vs.  
 20 LINKEDIN CORPORATION, a Delaware  
 21 Corporation,  
 22 Defendant.

CASE NO. 5:11-CV-02465 PSG

**JOINT CASE MANAGEMENT  
 STATEMENT AND FEDERAL RULE OF  
 CIVIL PROCEDURE 26(F) REPORT**

**DEMAND FOR JURY TRIAL**

23 Pursuant to the Court’s Order of May 20, 2011 (Doc. 2), Plaintiff EIT Holdings, LLC  
 24 (“EIT”) and Defendant LinkedIn Corporation (“LinkedIn”) submit this Joint Case Management  
 25 Report and Federal Rule of Civil Procedure 26(f).  
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1           **1. Jurisdiction and Service:**

2           On December 10, 2010, EIT filed a patent infringement action against multiple  
3 Defendants in the Northern District of California (C-10-05623-WHA) before the Honorable  
4 William H. Alsup. On May 11, 2011, Judge Alsup held that the Defendants, including LinkedIn,  
5 were improperly joined. He dismissed all except the first-named Defendant Yelp! Inc. and  
6 invited counsel for EIT to re-file against each Defendant in a separation action. This action  
7 results from that order.

8           This court has subject matter jurisdiction over EIT's claim under 28 U.S.C. § 1338(a)  
9 because this case involves a claim of patent infringement under 35 U.S.C. § 271. The Court  
10 likewise has subject matter jurisdiction over Defendant LinkedIn's counterclaims under 28  
11 U.S.C. §§ 1331, 1338(a), 2201 and 2202. No dispute exists regarding personal jurisdiction or  
12 venue as to LinkedIn.

13           Defendant LinkedIn was served with the Original Complaint in this case and answered  
14 that Complaint on June 21, 2011.

15           **2. Facts:**

16           EIT alleges that LinkedIn infringes claims 40 and 41 of United States Patent No. 5,828,837  
17 ("the '837 patent") entitled "Computer Network System and Method for Efficient Information  
18 Transfer" that was issued on October 27, 1998. EIT asserts that it holds the title by mesne  
19 assignments from the inventor, Martin Eikeland, including the right to sue for past, present and  
20 future damages.

21           Plaintiff asserts the following facts regarding the accused website. The Defendant  
22 provides a website that provides commercial and non-commercial information or allows users to  
23 buy products or services. Its website allows users to register and create a user account, which  
24 includes a unique id such as a unique email address or a user defined unique username for  
25 ordering or accessing information. LinkedIn receives and stores information about the users in a  
26 database through the use of a web connected server. When a registered user accesses Defendant's  
27 website, references to commercial and non-commercial target information, such as advertisements,  
28 additional content on areas of interest or information about additional products, are transmitted to

1 the user and displayed on his or her web accessible device, including but not limited to a desktop  
2 computer, a laptop computer, a mobile phone or a game console. LinkedIn determines appropriate  
3 target information for each user based on the user profile information including but not limited to  
4 demographics, personal preferences, interests, past content viewing history and past purchase  
5 history.

6 LinkedIn disputes that it infringes the asserted claims of the '837 patent and asserts that  
7 those claims are invalid at least because the prior art anticipates what EIT claims as its invention.  
8 LinkedIn asserts, for example, that more than a year prior to the filing of the '837 patent, MIT  
9 offered its students a personalized electronic newspaper (called Fishwrap) accessible via a  
10 website. To receive personalized news, students subscribed online to the Fishwrap service which  
11 created user accounts with user names for the students. Students would provide information  
12 about, for example, their hometown and academic interests to MIT which stored such information  
13 in a database through the use of a WWW server. When a registered user accessed the Fishwrap  
14 website, pages containing links to target information such as content on areas of interest (*e.g.*,  
15 Hometown news) were transmitted to and displayed on the computer used by the student. The  
16 selection of appropriate target information was made based on each student's profile which  
17 included the personal preferences of that student.

18 **3. Legal Issues:**

19 As in most patent cases, claim construction is a key legal issue in this case. In this case,  
20 another court in this district—Judge Alsup—will have considered and decided the meaning of  
21 claims 40 and 41 before this Court has had a chance to consider the issue. Judge Alsup has set a  
22 claim construction hearing in the prior-filed Yelp case for October 5, 2011, and is likely to issue  
23 an order before the end of the year. Such an order will construe terms relevant to this litigation,  
24 and is likely to obviate the need for this Court to consider some or all claim constructions issues.

25 For example, in the Yelp case, EIT is actually litigating before Judge Alsup the proper  
26 meaning of three means-plus-function limitations in claim 40 including whether the specification  
27 discloses a corresponding structure that is both clearly linked to the claimed function and that  
28 meets the requirements set forth in the Federal Circuit's decision in *Aristocrat Technologies*

1 *Australia Pty Ltd. v. Int'l Game Tech.*, 521 F.3d 1328 (Fed. Cir. 2008). LinkedIn believes that  
2 should the Court hold that the specification lacks a sufficient disclosure of corresponding  
3 structure, claim 40 would be invalid.

4 The parties also dispute whether claims 40 and 41 are valid or infringed. LinkedIn asserts  
5 that multiple prior art references and prior uses anticipate these claims including, for example,  
6 the Fishwrap system described above. LinkedIn further believes that if the claims are not so  
7 broad as to encompass the prior art, then they likewise do not extend to the activity that EIT  
8 contends infringes in its complaint and LinkedIn would not infringe the claims as a matter of  
9 law. EIT contends that the asserted claims are valid and infringed.

10 **4. Motions:**

11 There are no pending motions at this time. EIT's opening claim construction brief is due  
12 to be filed on August 31, 2011 in the prior-filed Yelp case. The claim construction hearing is set  
13 for October 5, 2011.

14 LinkedIn believes that motions are likely to be filed in the Yelp case that address issues  
15 that otherwise would arise in this case, including early summary judgment motions.

16 **5. Amendment of Pleadings:**

17 The parties state that they do not anticipate adding additional parties at this time or other  
18 amendments to the pleadings. LinkedIn may seek to amend its answer to include the affirmative  
19 defense of inequitable conduct to the extent that discovery uncovers evidence that would warrant  
20 pleading that defense.

21 **6. Evidence Preservation:**

22 Both parties have taken steps, including the suspension of normal document destruction  
23 programs and the institution of a litigation hold for both hardcopy documents and electronic  
24 documents, to preserve evidence relevant to the issues reasonably evident in this action, including  
25 interdiction of any document-destruction program and any ongoing erasures of e-mails and other  
26 electronically-recorded material. The parties agree that no party must interdict the erasure of  
27 voice mails.

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1           **7.     Disclosures:**

2           The parties will exchange initial disclosures pursuant to Fed. R. Civ. P. 26(a) by  
3 September 12, 2011.

4           **8.     Discovery and Other Scheduling:**

5           No discovery has yet been taken. The parties anticipate the scope of discovery will be  
6 tailored to the following subjects:

- 7           (i) the technical details of the Accused Websites;
- 8           (ii) the corresponding revenue generated therefrom;
- 9           (iii) '837 patent and its prosecution;
- 10          (iv) prior art to the '837 patent;
- 11          (v) ownership and assignments of the '837 patent;
- 12          (vi) knowledge of the websites accused of infringement by any owner(s) and assignee(s)  
13 of the '837 patent;
- 14          (vii) LinkedIn's affirmative defenses of invalidity and non-infringement of the '837  
15 patent;
- 16          (viii) Defendant's position that they it is not obligated to pay any damages related to the  
17 purported infringement of the '837 patent; and
- 18          (ix) license(s) related to the inventions claimed in the '837 patent.

19          The parties further agree that all documents and electronically stored information ("ESI")  
20 produced in discovery will be produced either in single-page Tagged Image File Format (".tiff")  
21 or in the document's native format at the producing-party's election. If any TIFF image cannot  
22 be viewed, however, the requesting party may request the native files that were associated with  
23 the unviewable TIFF images. While the parties are not required to OCR their documents before  
24 production, if they do, they shall produce, along with the TIFF images, electronically extracted  
25 text and/or OCR generated text.

26          The parties agree to adhere to Federal Rule of Civil Procedure 26(b)(5) in their assertion  
27 of a privilege or the work product, common interest or joint defense doctrines to withhold  
28 otherwise relevant documents. Moreover, the parties agree that each party asserting such a

1 privilege or doctrine shall log the withheld document in a manner that, without revealing  
2 information itself privileged or protected, will enable other parties to assess the claim. Neither  
3 party, however, shall be required to log withheld documents that were created on or after  
4 December 10, 2010, where those document were created by or sent to or from outside or in-house  
5 counsel for a party. The withheld document log for a given production must be provided within  
6 thirty (30) days of request by another party.

7 The parties propose that the discovery rules found in the Federal Rules of Civil Procedure  
8 should not be modified except to clarify that expert depositions shall not count towards the limits  
9 set forth by the Federal Rules of Civil Procedure.

10 The parties will negotiate in good faith on a stipulated protective order that is based on the  
11 model protective orders provided by the Northern District of California and will submit a  
12 stipulated protective order no later than September 12, 2011. The parties plan to propose a  
13 protective order that will provide for post-production assertion of privilege for inadvertently  
14 produced privileged documents.

15 **9. Class Actions:**

16 This matter is not a class action.

17 **10. Related Cases:**

18 Though the Court has declared the cases unrelated, the same patent is being asserted in the  
19 this District against Netflix, Inc. (C.A. No. 5:11-cv-02466 HRL), against Monster Worldwide, Inc.  
20 (C.A. No. 5:11-cv-02472 HRL), against Priceline.com Incorporated (C.A. No. 3:11-cv-02468-  
21 MEJ), against TheStreet.com, Inc. (C.A. No. 3:11-cv-02469 JCS), against eHarmony.com, Inc.  
22 (C.A. No. 3:11-cv-02463 JCS) against TicketMaster L.L.C. (C.A. No. 3:11-cv-02471 EDL) and  
23 against Yelp!, Inc. (C.A. No. 3:10-cv-05623 WHA). The same patent is also being litigated in  
24 United States District Court for the District of Delaware against WebMD LLC (C.A. No. 10-1081-  
25 JBS-AMD).

26 **11. Relief:**

27 EIT contends that it is entitled to damages adequate to compensate it for LinkedIn's  
28 infringement. EIT also contends that, in accordance with the patent laws, it is entitled to at least a

1 reasonable royalty for LinkedIn's infringement of the claimed inventions. EIT contends that a  
2 comprehensive determination of a reasonable royalty cannot be made at this time. In addition,  
3 EIT contends that it is entitled to interest and costs as determined by the Court.

4         LinkedIn contends that because it does not infringe the asserted claims of the '837 patent,  
5 and because the asserted claims of '837 patent are invalid, EIT should take nothing by way of its  
6 Complaint and that the Court should issue a declaration that each asserted claim of the '837  
7 patent has not been infringed and/or that each asserted claim of the '837 patent is invalid.

8                 **12. Settlement and ADR:**

9         The parties have had preliminary discussions, but have not reached a resolution. Based on  
10 those preliminary discussions, LinkedIn believes that any form of ADR is premature at this point  
11 and that settlement discussions will not be productive at least until after the parties have briefed  
12 claim construction and likely not until they have briefed motion(s) for summary judgment in the  
13 Yelp case. To that end, LinkedIn would propose a deadline to complete court-sponsored ADR of  
14 February 29, 2012.

15         Plaintiff EIT believes that an early deadline to complete court-sponsored ADR would save  
16 both the parties' and Court's time and resources. EIT, however, agrees to a February 29, 2012  
17 deadline for completing court-sponsored ADR.

18                 **13. Consent to Magistrate Judge For All Purposes:**

19         The parties have consented to proceed before a magistrate judge.

20                 **14. Other References:**

21         The parties do not believe this case is suitable for reference to binding arbitration, a  
22 special master, or the Judicial Panel on Multidistrict Litigation.

23                 **15. Narrowing of Issues:**

24         The parties are not aware of any issues that can be narrowed by agreement or by motion at  
25 this time.

26                 **16. Expedited Schedule:**

27         EIT contends that this is not the type of case that can be handled on an expedited basis  
28 with streamlined procedures.

1           LinkedIn also believes that this case should not be handled on an expedited basis.  
 2 LinkedIn believes that Judge Alsup will decide issues in the prior-filed Yelp case that will have a  
 3 direct impact on this case, including claim construction and potentially the validity of some or all  
 4 of the claims asserted in this case. LinkedIn therefore believes that efficiencies for the parties and  
 5 the Court militate in favor of a schedule that deviates from the Patent Local Rules by providing  
 6 additional time before claim construction to permit Judge Alsup to rule on claim construction in  
 7 the Yelp case. EIT's proposed schedule is in accordance with the local rules.

8           **17.    Scheduling:**

9           The parties propose the following schedules:

<b>Event</b>	<b>EIT</b>	<b>LinkedIn</b>
Rule 26(f) Conference	August 16, 2011	August 16, 2011
Rule 26(a) Initial Disclosures	August 30, 2011	September 12, 2011
Deadline to comply with Civil L.R. 16-8 and ADR L.R. 3-5	February 29, 2012	February 29, 2012
Initial Case Management Conference	September 6, 2011	September 6, 2011
Last Day for Plaintiff's Disclosure of Asserted Claims and Infringement Contentions (Patent L.R. 3-1) and Related Documents (Patent L.R. 3-2)	September 20, 2011	September 20, 2011
Deadline to Amend Pleadings	January 23, 2012	March 5, 2012
Last Day for Defendant's Invalidity Contentions (Patent L.R. 3-3) and Related Document Production (Patent L.R. 3-4)	November 4, 2011	November 4, 2011
Last Day for the Exchange of Proposed Terms and Claim Elements for Construction (Patent L.R. 4-1(a))	November 18, 2011	January 16, 2012
Last Day for Exchange of Preliminary Proposed Claim Construction and Extrinsic Evidence (Patent L.R. 4-2)	December 9, 2011	February 6, 2012
File Joint Claim Construction Statement (Patent L.R. 4-3) – limited to 10 terms	January 3, 2012	April 3, 2012



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<b>Event</b>	<b>EIT</b>	<b>LinkedIn</b>
unless leave of court granted		
Completion of Claim Construction Discovery (Patent L.R. 4-4)	February 2, 2012	May 7, 2012
Last Day for Plaintiff's Opening Claim Construction Brief (Patent L.R. 4-5(a))	February 17, 2012	May 21, 2012
Last Day for Defendant's Opposing Claim Construction Brief, (Patent L.R. 4-5(b))	March 2, 2012	June 4, 2012
Last Day for Plaintiff's Reply Claim Construction Brief (Patent L.R. 4-5(c))	March 9, 2012	June 11, 2012
Tutorial	Subject to Court's calendar	Subject to Court's calendar
Claim Construction Hearing	Subject to Court's calendar	Subject to Court's calendar
Further Joint Case Management Report and Conference	Within 30 days of claim construction ruling	Within 30 days of claim construction ruling
Advice of Counsel Disclosure	50 days after claim construction ruling	50 days after claim construction ruling
Close of Fact Discovery	TBD	
Deadline for Rule 26(a)2(B) expert designations for party bearing the burden of proof	TBD	
Close of all Expert Discovery	TBD	
Deadline for filing dispositive motions	TBD	
Deadline for oppositions to dispositive motions	TBD	
Deadline for replies in support of dispositive motions	TBD	
The parties propose that the hearings on dispositive motions be held before this date	TBD	
Deadline for filing motions in limine; and papers in support thereof	TBD	
The parties shall file a joint statement of the case, a joint exhibit list, a joint witness list, proposed jury instructions and a	TBD	

Event	EIT	LinkedIn
proposed verdict form;		
The parties will lodge the Final Pre-Trial Conference Order;	TBD	
Trial	TBD	

Neither party has proposed a schedule beyond the further joint case management report and conference. By that conference, the parties will have received the Court’s order on claim construction. The parties believe they will then be better positioned to provide suggestions on what the remainder of the schedule should be, including specifically expert and fact discovery deadlines.

**18. Trial:**

EIT anticipates that this case will be tried by jury and the anticipated length of the trial is approximately 5-7 days. EIT does not believe the trial should be bifurcated.

LinkedIn believes that this case will be resolved in its favor on summary judgment. LinkedIn agrees that any remaining issues would be tried to a jury but anticipates that trial should last up to 7 days depending on the remaining issues to be tried.

**19. Disclosure of Non-party Interested Entities or Persons:**

The parties have filed their respective “Certification of Interested Entities or Persons” required by Civil Local Rule 3-16. In its Certification of Interested Entities or Persons, defendant LinkedIn Corporation certified that it has no parent corporation, and that no publically-held corporation owns 10% or more of its stock.

EIT also certified certified that it has no parent corporation, and that no publically-held corporation owns 10% or more of its stock.

**20. Other Matters:**

In addition, the parties address below the further matters required under Patent Local Rule 2-1.

**a. Proposed modifications to the obligations or deadlines set forth in the Patent Local Rules.**

1           LinkedIn proposes the modifications of the deadlines provided for in the Patent Local  
2 Rules as outlined above in Discovery and Other Scheduling. EIT has not modified any deadlines.

3           **b.       The format of the Claim Construction Hearing, including whether the Court**  
4           **will hear live testimony, the order of presentation, and the estimated length of**  
5           **the hearing.**

6           The parties do not believe that live testimony should be received at the claim construction  
7 hearing. The parties propose that the plaintiff EIT shall present first followed by defendant  
8 LinkedIn's presentation with the Court free to seek further responses from either party after their  
9 initial presentations. The parties estimate that the claim construction hearing will last  
10 approximately 3 hours.

11           **c.       The scope and timing of any claim construction discovery**

12           At this time, neither party anticipates a need for limiting the scope of discovery relating to  
13 claim construction.

14           **d.       How the parties intend to educate the court on the technology at issue.**

15           The parties do not believe that a short technology tutorial is necessary in this case, but are  
16 happy to present a tutorial if the Court would prefer one. The parties do not believe that any  
17 technology tutorial would last more than twenty (20) minutes per side.  
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1 Dated: August 30, 2011

Respectfully submitted,

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3 **Counsel for EIT Holdings, LLC**

**Counsel for LinkedIn Corporation**

4 By: /s/ Edward W. Goldstein

By: s/ Ryan Kent

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15  
16 **Attestation of Concurrence**

17  
18 I, Edward W. Goldstein, as the ECF user and filer of this document, attest that  
19 concurrence in the filing of this document has been obtained from each of the above signatories.

20  
21 Dated: August 30, 2011

By: /s/ Edward W. Goldstein

**Counsel for EIT Holdings, LLC**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on August 30, 2011, or, if not yet registered with the Court's CM/ECF system, via electronic mail pursuant to Fed.R.Civ.P. 5(b)(2)(E). Any other counsel of record will be served by first class U.S. Mail.

*/s/ Edward W. Goldstein*  
Edward W. Goldstein