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14	UNITED STATES	DISTRICT COURT	
16	NORTHERN DISTRICT OF CALIFORNIA		
17	SAN FRANCISCO DIVISION		
18	EIT HOLDINGS LLC, a Delaware company	CASE NO. 5:11-CV-02465-PSG	
19	Plaintiff,	SUPPLEMENTAL JOINT CASE	
20	vs.	MANAGEMENT STATEMENT	
	LINKEDIN CODDOD ATION - a Dalamara		
-1	LINKEDIN CORPORATION., a Delaware		
21	LINKEDIN CORPORATION., a Delaware Corporation,	DEMAND FOR JURY TRIAL	
21 22	Corporation,	DEMAND FOR JURY TRIAL	
		DEMAND FOR JURY TRIAL	
22	Corporation,	DEMAND FOR JURY TRIAL	
22 23	Corporation, Defendant.	DEMAND FOR JURY TRIAL er 1, 2011 (Doc. 29), Plaintiff EIT Holdings,	
22 23 24	Corporation, Defendant.	er 1, 2011 (Doc. 29), Plaintiff EIT Holdings,	
22 23 24 25	Corporation, Defendant. Pursuant to the Court's Order of Novemb	er 1, 2011 (Doc. 29), Plaintiff EIT Holdings,	

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DESCRIPTION OF SUBSEQUENT CASE DEVELOPMENTS

On September 6, 2011, the parties came before the Court for their initial case management 2 3 conference. At that conference and in their joint case management statement (ECF No. 22), the parties explained the procedural history of the ligitation. In particular, the parties explained that 4 5 EIT filed a patent infringement action against multiple Defendants in the Northern District of California before the Honorable William H. Alsup (C-10-05623-WHA) and that Judge Alsup 6 dismissed all except the first-named Defendant Yelp! Inc. based on misjoinder. The parties further 7 explained that this case follows from Judge Alsup's order and involves the same patent as the 8 prior-filed Yelp case—United States Patent No. 5,828,837 ("the '837 patent"). Given that Judge 9 10 Also had set a claim construction hearing involving the same patent for early October 2011, the parties asked the Court to continue the case management conference and to hold off setting a 11 schedule until Judge Alsup had had time to consider EIT and Yelp's respective positions on what 12 the claims mean. On October 24th, Judge Alsup issued his claim construction order. 13 On November 18, 2011, Yelp filed a Motion for Summary Judgment of Invalidity. EIT 14

15 filed its Opposition on December 16, 2011. Oral argument is set for January 19, 2012.

The result of the motion for summary judgment filed in the Yelp case has the potential to 16 significantly impact this case. Those proceedings could result in a judgment of invalidity as to 17 one or both of the asserted claims of the '837 patent. Those proceedings also could reveal 18 additional claim terms that would need construction either by Judge Alsup or this Court. While 19 20 LinkedIn agrees with the current claim constructions issued by Judge Alsup, and would not challenge their adoption in this case by this Court, EIT disagrees. Because Judge Alsup limited 21 22 the number of claims to be construe to six and because he declined to construe one of those six, 23 EIT believes additional claim construction would be beneficial.

The parties also appeared at a settlement conference with Magistration Judge Speroon December 6, 2011. That settlement conference was not successful.

26 The parties remain in disagreement as to proposed deadlines in this matter.

27 EIT's Position

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EIT has been following the local rules and proposes a schedule that continues to follow
the local rules, which includes the filing of the joint claim construction statement concurrent
with this report. LinkedIn has declined to confer or otherwise participate in that joint statement.
Defendants' Position

5 Defendant does not believe that the Court set a schedule that would require the filing of a joint claim construction statement today. At the initial case management conference, the Court 6 7 merely set a further status conference and ordered that "[d]eadlines prior to November 1st to remain in effect." ECF No. 23. At that status conference, the parties updated the Court on the 8 9 events in the Yelp case, and the Court set a further status conference without any indication that 10 there were any deadlines that the parties needed to meet. ECF No. 29. Defendant therefore 11 believes it to be premature to file a joint claim construction statement and would request that the 12 Court set an appropriate date for filing that statement at the case management conference.

Defendant also believes that the schedule proposed by EIT is impractical. EIT proposes 13 the filing of a joint claim construction statement today but the parties have yet to meet and 14 15 confer on what terms should be presented to the Court or on whether they can reach agreement on the meaning of such proposed terms. Moreover, in deciding what is an appropriate schedule, 16 LinkedIn believes that the process contemplated by the local rules is better served by providing 17 the parties time to consider the results of the hearing on Yelp's motion for summary judgment to 18 be held on January 19, 2012. In particular, the construction of several terms proposed by EIT for 19 20 construction in this case—including the phrases "reference" and "means for accessing"—have been raised by EIT in the summary judgment proceedings pending before Judge Alsup, and 21 22 Judge Alsup's ruling is likely to have a direct impact on what (if any) construction is appropriate 23 for these terms. It also true that claim construction in this case will prove necessary only if Judge Alsup's ruling does not invalidate the asserted claims. In that event, which Defendant 24 25 believes to be unlikely, the court's order may shed light on further terms that need construction to resolve this case. It therefore makes little sense to finalize the claim terms and constructions 26 that would have to be litigated in this case before the parties have an opportunity to review Judge 27 28 Alsup's order on summary judgment.

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The parties propose the following schedules:

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2	Event	EIT	LinkedIn
3 4	File Joint Claim Construction Statement (Patent L.R. 4-3) – limited to 10 terms unless leave of court granted	January 3, 2012	April 3, 2012
5 6	Completion of Claim Construction Discovery (Patent L.R. 4-4)	February 2, 2012	May 7, 2012
7	Last Day for Plaintiff's Opening Claim Construction Brief (Patent L.R. 4-5(a))	February 17, 2012	May 21, 2012
8 9	Last Day for Defendant's Opposing Claim Construction Brief, (Patent L.R. 4-5(b))	March 2, 2012	June 4, 2012
10	Last Day for Plaintiff's Reply Claim Construction Brief (Patent L.R. 4-5(c))	March 9, 2012	June 11, 2012
11 12	Tutorial	Subject to Court's calendar	Subject to Court's calendar
13	Claim Construction Hearing	Subject to Court's calendar	Subject to Court's calendar
14 15	Further Joint Case Management Report and Conference	Within 30 days of claim construction ruling	Within 30 days of claim construction ruling
16 17 18	Advice of Counsel Disclosure	50 days after claim construction ruling	50 days after claim construction ruling
19	Close of Fact Discovery	TBD	
20 21	Deadline for Rule 26(a)2(B) expert designations for party bearing the burden of proof	TBD	
22	Close of all Expert Discovery	TBD	
23	Deadline for filing dispositive motions	TBD	
24 25	Deadline for oppositions to dispositive motions	TBD	
23 26	Deadline for replies in support of dispositive motions	TBD	
27 28	The parties propose that the hearings on dispositive motions be held before this date	TBD	

	Event	EIT	LinkedIn				
	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 proposed verdict form;	TBD					
	The parties will lodge the Final Pre-Trial Conference Order;	TBD					
	Trial	TBD					
	Dated: January 3, 2012	Respectfully su	ubmitted,				
Counsel for EIT Holdings, LLC By: <u>/s/ Edward W. Goldstein</u> Alisa A. Lipski (SBN 278710) Edward W. Goldstein (TX Bar No. 08099500) GOLDSTEIN & LIPSKI, P.L.L.C. 1177 West Loop South, Suite 400 Houston, TX 77027 Tel: 713-877-1515 Fax: 713-877-1515 Fax: 713-877-1737 Email: alipski@gliplaw.com Email: egoldstein@gliplaw.com Benedict O'Mahoney (SBN 152447) TERRA Law LLP 177 Park Avenue, Third Floor San Jose, California 95113 Tel: (408) 299-1200 Fax: (408) 998-4895 Email: bomahoney@terra-law.com		Counsel for LinkedIn Corporation By: <u>s/ Ryan Kent</u> Daralyn Durie (SBN 169825) Ryan M. Kent (SBN 220441) Durie Tangri LLP 217 Leidesdorff Street San Francisco, CA. 94111 Tel: (415) 362-6666 Fax: (415) 236-6300 Email: ddurie@durietangri.com Email: rkent@durietangri.com					

1	Attestation of Concurrence				
2	I, Edward W. Goldstein, as the ECF user and filer of this document, attest that				
3	concurrence in the filing of this document has been obtained from each of the above signatories.				
4					
5	Dated: January 3, 2012By: /s/ Edward W. Goldstein				
6	Counsel for EIT Holdings, LLC				
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1	CEDTIFICATE OF SEDVICE
2	CERTIFICATE OF SERVICE
3	The undersigned hereby certifies that all counsel of record who are deemed to have
4	consented to electronic service are being served with a copy of this document via the Court's
5	CM/ECF system on January 3, 2012, or, if not yet registered with the Court's CM/ECF system, via
6	electronic mail pursuant to Fed.R.Civ.P. 5(b)(2)(E). Any other counsel of record will be served by
7	first class U.S. Mail.
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9	<u>/s/ Edward W. Goldstein</u> Edward W. Goldstein
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