

Michael T. Zeller (Bar No. 196417)
michaelzeller@quinnemanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 S Figueroa St., 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

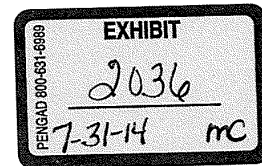
Ryan Baker (Bar No. 214036)
rbaker@bakermarquart.com
Baker Marquart LLP
10990 Wilshire Blvd., 4th Floor
Los Angeles, CA 90024
Telephone: (424) 652-7800
Facsimile: (424) 652-7850

Carlos A. Rodríguez (*pro hac vice*)
carlosrodriguez@quinnemanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

*Attorneys for Plaintiff eDirect
Publishing, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

eDirect Publishing, Inc.	CASE NO. 3:12-cv-01123-JLS-JMA
Plaintiff,	
vs.	
LiveCareer, Ltd., and	DECLARATION OF DR. MICHAEL
North America LiveCareer, Inc.	IAN SHAMOS IN SUPPORT OF
Defendants.	PLAINTIFF'S SUPPLEMENTAL
	CLAIM CONSTRUCTION BRIEF
LiveCareer, Ltd., and North America	Courtroom: 4A
LiveCareer, Inc.,	Judge: Hon. Janis L. Sammartino
Counterclaimants,	
v.	
eDirect Publishing, Inc.,	
Counterdefendant.	



DECLARATION OF DR. MICHAEL IAN SHAMOS IN SUPPORT OF
PLAINTIFF'S SUPPLEMENTAL CLAIM CONSTRUCTION BRIEF
CASE NO. 3:12-cv-01123-JLS-JMA

DECLARATION OF DR. MICHAEL SHAMOS

I, Michael Ian Shamos, declare:

1. I have been retained by Baker Marquart LLP on behalf of its client, Plaintiff eDirect Publishing, Inc. ("eDirect") in relation to eDirect's case against LiveCareer, Ltd. and North America LiveCareer, Inc. (together, "Defendants" or "LiveCareer") in this action. I have been asked to offer an opinion on how a person of ordinary skill in the art of U.S. Patent Nos. 6,363,376 ("376 Patent") and 6,757,674 ("674 Patent") (together, the "Patents-In-Suit") would understand the disputed claim terms at issue in the case. I previously submitted a declaration on claim construction in this case dated August 20, 2013 (D.I. 54-5, the "First Declaration"). My qualifications and experience were detailed at ¶¶2-8 of the First Declaration.

2. I am informed that documents bearing Bates SLG000127-189 were produced by the Sawyer Law Group pursuant to a third party subpoena issued by Defendants. I have reviewed these documents. They appear to be Patent Office actions and applicant responses relating to U.S. Patent Application 10/434,976 (the "'976 Application"). In preparing this declaration I have also reviewed the claim construction briefs submitted by the parties including supporting declarations and exhibits, a transcript of the April 9, 2014 Claim Construction Hearing (the "Hearing"), and copies of the demonstratives exchanged by the parties at the Hearing.

3. I stand by, and incorporate herein by reference, the First Declaration.

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1 4. The '976 Application is an abandoned continuation-in-part of the
2 application that led to U.S. Pat. No. 6,757,674, one of the Patents-In-Suit. The '976
3 Application was never published by the PTO, which means that the '976 application
4 and its prosecution history are secret and not available to the public. I am informed
5 that the '976 Application does not form part of the prosecution history of any patent
6 because the public does not have access to it and cannot rely on it. Nevertheless, I
7 have been asked to consider whether anything in the '976 Application affects the
8 construction of disputed terms "querying," "query string," "automatically filling-in..."
9 or "collecting information from a user," as those terms are used in the asserted claims
10 of the Patents-In-Suit. I conclude that there would be no effect on claim construction
11 even if the '976 Application is taken to be part of the '674 Prosecution History.
12

13 5. I am informed that the claims asserted by eDirect are 1-2, 6-10, 15-16 and
14 20-24 of the '376 Patent and 1, 3-8, 13 and 16-20 of the '674 Patent. My opinions are
15 the same whether the person of ordinary skill has the skill level proposed in my First
16 Declaration or in the declaration of LiveCareer's expert, Mr. Connolly.
17

18 6. Nothing in the '976 Application can be construed as a clear, unmistakable
19 or unambiguous disavowal of scope of the asserted claims.
20

21 7. In the context of the Patents-In-Suit and their claims and specification
22 "querying" means "submitting information to." This is a known meaning of
23 "querying" to persons of ordinary skill in the art in of the Patents-In-Suit at the time of
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1 the invention. While the plain meaning of “querying” can also include “asking,”
2 “inquiring” or “searching,” the term is used in the Patents-In-Suit in the context of the
3 World Wide Web. The Web comprises clients and servers exchanging requests and
4 responses using the HTTP protocol. All interaction between a client (e.g., “Web
5 browser”) and a Web server is in the form of HTTP requests, and all requests from
6 clients submit information to the server, whether or not those requests pose questions,
7 solicit searching or simply cause information to be uploaded to the server.
8

9
10 8. For example, an HTTP GET request submits to the web server the URL of
11 a document requested by the client. That URL may also contain additional
12 information sent to the server through what is called a “URL query string.” An HTTP
13 POST request can be used to submit any kind of information to the web server
14 including, for example, search criteria, an order form or a resume.
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17 9. The asserted claims use the term “querying” to refer generally to
18 submitting information to web servers. The act of submitting information to a server is
19 also called “posting,” which motivates the use of the word “POST” in that HTTP
20 command. However, one can also “post” certain information using a GET. The
21 patents do not make any specific reference to either the HTTP GET or the HTTP
22 POST. I can readily see how confusion between “POST” and “post” might arise
23 among those without the required level of skill, but not because of any ambiguity in
24 the specification or claims of the Patents-In-Suit.
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1 10. Nothing in the intrinsic evidence, including the prosecution histories of
2 the Patents-In-Suit and of the '976 Application suggests that “querying” should be
3 limited to “searching.” Querying can include requests for documents or search results,
4 but it can also refer solely to submitting information to a website, such as a resume.
5 *See, e.g.*, '376 Patent Col. 3:20-23 (“The present invention relates to **querying** multiple
6 career websites on the Internet from a single interface, **including** generating resumes
7 and automatically **submitting resumes** to the career websites on the Internet.”)
8 (emphasis added).
9
10

11
12 11. Construing “querying” to mean “searching” is contrary to the intrinsic
13 evidence and, most importantly, it contradicts the claims themselves. For example,
14 “querying” appears in the preamble of claim 1 of the '376 Patent, but that claim
15 recites steps to “automatically submit the resume to the multiple career websites.”
16 Because the claim includes posting a resume—and does not recite or require any type
17 of searching—limiting the claim preamble to “searching” would be a clear error.
18
19

20 12. The '976 Application used “querying” to mean “submitting information
21 to.” In an amendment submitted on May 11, 2004, the applicant changed the preamble
22 of proposed claim 1 to read “querying and posting” instead of just “querying.”
23 (SLG000143-159). The applicant explained that the change did not add any new
24 matter, noting that “posting” was already “inherently disclosed throughout the
25 Specification in which the submission of data to websites is described.” (SLG000158).
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1 Accordingly, the applicant understood “querying” in the claims of the ’976
2 Application to already encompass “posting” of a resume, consistent with the
3 disclosures of the specification of the Patents-In-Suit.
4

5 13. In my experience, it is not uncommon for a patent applicant to prosecute
6 new claims in a continuation-in-part application that are directed at the same general
7 invention but using slightly different words. In my opinion, that was the intention of
8 the applicant when the proposed claims in the ’976 Application were amended. The
9 applicant could have anticipated that a future accused infringer, like LiveCareer in the
10 present case, would attempt to unduly narrow the claims by construing “querying”
11 using dictionary definitions rather than the understanding of a skilled artisan. The ’976
12 Application claim amendments simply confirm that the applicant understood
13 “querying” to have the full scope of its meaning to persons of ordinary skill, and did
14 not see the term as limited to or requiring “searching,” as LiveCareer proposes.
15

16 14. Similarly, the ’976 Application is consistent with my understanding of
17 “query strings” as referring to strings for sending data to a website. The term “query
18 strings” is understood by persons of ordinary skill in the art as a method for passing
19 parameter values between programs or clients and servers. A “query string” can
20 consist of, e.g., a keyword list, which is composed of terms separated by plus signs (as
21 in “cat+dog+rabbit”) or a named parameter list, which is composed of name-value
22 pairs separated by ampersands (as in “pet1=cat&pet2=dog&pet3=rabbit”).
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1 15. My understanding of the term is confirmed by Lincoln D. Stein, "How to
2 Set Up and Maintain a World Wide Web Site," Addison-Wesley (1995), pp. 292-298,
3 a book recognized as authoritative by both parties at the Hearing. (D.I. 54-4). The
4 book clearly states that a "query string" can consist of a keyword list or a named
5 parameter list, and that it may or may not be part of a URL. When the query string is
6 submitted to a website using a GET request, it is appended to the URL. However,
7 when the query string is submitted to a website using the POST request it is not
8 appended to the URL. At the Hearing, LiveCareer conceded that the patents disclose
9 to a person of ordinary skill in the art using GET or POST to submit a resume to a
10 career website. (Hr. Tr. 126). Therefore, it would be an error to construe "query
11 string" narrowly as the "portion of a URL after the file name and question mark"
12 because this would exclude the use of POST requests disclosed in the specification.

13 16. Nothing in the '976 Application alters the proper construction of the term
14 "query strings." Proposed claim 1 of the '976 Application was amended to read
15 "forming respective query strings or forming respective post data" instead of just
16 "forming respective query strings." This change was part of the Amendment discussed
17 above, in which the applicant represented to the PTO that the changes did not add new
18 matter. Therefore, in my opinion the '976 Application confirms to one of ordinary
19 skill in the art that the applicant understood "forming respective query strings" to
20 already include forming query strings comprising post data, or "forming respective
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1 post data” to be submitted to the career websites.

2 17. I disagree with the argument advanced by LiveCareer that the Patents-In-
3
4 Suit disclose a “dual” invention such that every asserted claim must include
5 “searching” as a limitation. (See Hr. Tr. 79:8-81:2.) None of the asserted claims
6 recites a “searching” step, and nothing in the intrinsic evidence warrants reading that
7
8 limitation into the claims.

9 I declare under penalty of perjury under the laws of the United States of
10 America that the foregoing is true and correct.
11

12 Executed on April 30, 2014, at Pittsburgh, Pennsylvania.
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15 By:

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17 Michael Ian Shamos
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