UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD
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TWITTER, INC. AND YELP INC.
Petitioner,

v.

EVOLUTIONARY INTELLIGENCE, LLC,
Patent Owner

Case IPR 2014-0092
Patent No. 7,010,536

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PRELIMINARY RESPONSE BY PATENT OWNER

UNDER 37 C.F.R. § 42.107

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PRELIMINARY RESPONSE BY PATENT
OWNER UNDER 37 C.F.R. § 42.107

Patent Owner Evolutionary Intelligence LLC hereby respectfully submits this Preliminary Response to the Petition seeking *inter partes* review of U.S. Patent No. 7,010,536.

The Petition is deficient and relies on prior art references that are entirely distinct from the '536 patent. The Petition should be rejected for four independent reasons. First, the Petition fails to explain the relevance of the prior art to the claims as required by 37 C.F.R. § 104(b)(5), including failing to establish that the prior art discloses all elements "arranged as in the claims." Furthermore, the Petition should be rejected on the merits, because it fails to demonstrate a reasonable likelihood of any claims being invalid—particularly because it relies on unreasonably broad constructions for and fails to construe terms that are material to all of the claims at issue. For at least these reasons, the Petition does not show a reasonable likelihood of prevailing with respect to any of the challenged claims, and *inter partes* review should not be instituted.

This filing is timely under 35 U.S.C. § 313 and 37 C.F.R. § 42.107, as it is being filed within three months of the October 30, 2013 mailing date of the Notice granting the Petition a filing date of October 23, 2013.

I. There Is No Reasonable Likelihood of Petitioner Prevailing As To A Challenged Claim of the '536 Patent

"The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged . . . ." 35 U.S.C. § 314(a). As discussed below, all the anticipation rejections proposed in the Petition are deficient for failing to set forth each and every feature arranged as recited by the respective claims of the '682 Patent, and thus do not establish a *prima facie* case of anticipation.

Patent Owner has limited its identification of deficiencies in Petitioner's argument in this Preliminary Response; no arguments are waived with respect to issues not addressed in this Preliminary Response.

A. Technology Background

The '536 patent describes a "System and Method for Creating and Manipulating Information Containers With Dynamic Registers." The invention is directed at improving the processing of "containerized" data, such as the data that makes up web pages and documents. At the time of the invention, processing information resources on a computer network (e.g., the internet) was primarily static, in that the processing did not result in dynamic modifications that would

improve future processing efforts. For example, the searching of data was "accomplished by individuals directing a search effort by submitting key words or phrases to be compared to those key words or phrases contained in the content or description of that information resource, with indices and contents residing in a fixed location unchanging except by human input." Ex. 1001 at 1:22-28. As the '536 patent notes, this "static" information model was limited, because, *inter alia*, the information being processed did not evolve to reflect its actual utility to the people using it, and successful search strategies were not available to be used to process future searches. Ex. 1001 at 1:37-2:48. At most, the prior art allowed "hits" for a given web page to be tracked—a static process. *See* Ex. 1001, 2:8-13.

The invention solved this problem through the use of "dynamic" information containers. The dynamic information containers include dynamic registers that attach to and form part of the container. Ex. 1001 at 2:66-3:5. Each container has an information element (e.g., an advertisement, article, or a text string), a plurality of registers, and a gateway. The plurality of registers for each container include (i) a unique identification register for that container; (ii) a second register governing the interactions of the container according to utility of the information in the information element relative to space or time; (iii) an active register controlling whether the container acts upon other containers according at a given time or location; (iv) a passive register controlling whether the container can be acted upon

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