DECLARATION OF DON TURNBULL, PH.D

I.   INTRODUCTION AND QUALIFICATIONS

1.   I, Don Turnbull, Ph.D, submit this declaration in support of Twitter, Inc. ("Twitter") and Yelp Inc.'s ("Yelp") (collectively "Petitioners") Petition for *Inter Partes* Review of United States Patent No. 7,010,536 ("the '536 patent"), owned by Evolutionary Intelligence, LLC.

2.   I make this declaration based upon personal knowledge. I am over the age of 21 and otherwise competent to make this declaration.

3.   The statements herein include my opinions and the bases therefore, which relate to the '536 patent and United States Patent No. 5,493,692 to Theimer et al. entitled "Selective Delivery of Electronic Messages In A Multiple Computer System Based On Context And Environment Of A User" ("Theimer) which discloses all elements in claims 1-16 of the '536 patent. Although I am being compensated for my time at a rate of $450 per hour in preparing this declaration, the opinions herein are my own, and I have no stake in the outcome of the review proceeding. My compensation does not depend in any way on the outcome of Petitioners' petition.

4.   I am currently a consultant focusing on software research and design in the computer science and information systems including consumer and enterprise applications such as mobile device information platforms, collaborative

filtering and recommendation systems, analytics applications, search tools and

ecommerce systems including Web sites. I also continue to conduct research and

practice in areas related to data mining (data science), Human-Computer

Interaction, Information Retrieval and Information Science, and mobile Internet

use (most recently mobile application recommendation systems and mobile

analytics tools).

5.   From 2002 to 2009, I was an Assistant Professor at the University of

Texas at Austin, where I created and taught graduate-level courses and

development labs on Information Architecture, Interaction Design & Human

Computer Interaction, Web Analytics, Web Information Retrieval Evaluation &

Design (search), the Semantic Web and Knowledge Management systems. I

continue to work with the University of Texas at Austin's Technology Incubator as

an advisor to the University and industry partners on matters related to software

research and design, including computer science research and intellectual property

creation and evaluation.

6.   From 2000-2001, I was Director of Advanced Development at

Outride, Inc., a spinout from the Xerox PARC research lab, which was acquired by

Google. At Outride, I invented and coordinated intellectual property assets

including patent applications and licensed patents from Xerox PARC as well as

original work developed at Outride. I acted as the director for all corporate data mining, interface designs and usability studies activities.

7.   I received my B.A. in General Studies from the University of Texas at Arlington with a focus on Knowledge Engineering (Computer Science & Cognitive Science) in 1988. I received an M.S. in Information, Design & Technology from Georgia Institute of Technology in 1995 where my thesis was entitled "Object-Oriented Information Development: A Methodology and System for Large-Scale Hypertext Documents" that focused on Web-based systems for creating, organizing and publishing content. I received my Ph.D. in Information Studies from the University of Toronto in 2002 where my dissertation was entitled "Knowledge Discovery in Databases of Web Use: A Search for Informetric and Behavioral Models of Web Information Seeking" that explored ideas related to user behavior and interaction with Internet search and browsing systems by building a set of data analysis programs.

8.   A copy of my *curriculum vitae* with full descriptions of my education, professional achievements, and qualifications is attached hereto, which includes a listing of additional relevant industry experience, publications, and presentations.

II.   MATERIALS REVIEWED

9.   In forming my opinions, I have reviewed: (1) the '536 patent and its prosecution history; (2) the Theimer patent that is prior art to the '536 patent; (3)

Evolutionary Intelligence's Complaints for Patent Infringement against Twitter, Inc. and Yelp Inc.; (4) Infringement Contentions served by Evolutionary Intelligence in the district court litigation against (a) Yelp; (b) Twitter; and (c) Apple; (5) certain portions of the IEEE Standard Dictionary of Electrical and Electronics Terms (Sixth Edition) (1997); (6) certain portions of the IBM Dictionary of Computing 1999.

III. PERSON OF ORDINARY SKILL IN THE ART OF THE '536 PATENT

10. Counsel for Petitioners has informed me that the content of a patent and prior art should be interpreted the way a person of ordinary skill in the art would have interpreted the reference at the time the provisional application for the '536 patent was filed in the United States – January 30, 1998.

11. It is my opinion that one of ordinary skill in the art at the time of the filing date of the patent would possess a Bachelors of Science degree in Computer Engineering, Computer Science or some closely related degree, and would have two or more years of working experience in the area of software application development, focusing on experience with Internet technologies including HTML, web browsers, and Web-related client/server concepts; database management systems; object-oriented programming; and distributed programming concepts. One of ordinary skill in the art would have also had some understanding of the

prior art commercial tools and technologies available at the time for use in web application development, such as Web servers, Internet-based data exchange protocols (such as HTTP, messaging protocols and XML). Advanced formal university work could offset less working experience in the area, and additional related working experience could compensate for less or no formal university education.

12.   I have been asked by Petitioners' counsel to assume that the person of ordinary skill is a hypothetical person who is assumed to be aware of all the pertinent information that qualifies as prior art. In addition, the person of ordinary skill in the art makes inferences and takes creative steps.

IV.   STANDARDS FOR CLAIM CONSTRUCTION AND ANTICIPATION

13.   Counsel for Petitioners has informed me that a patent claim is invalid as anticipated (*i.e.*, invalid under 35 U.S.C. § 102) if every limitation of a claim is found identically (either expressly, implicitly, or inherently) in a reference. A reference inherently discloses the subject matter that a person of ordinary skill in the art would have recognized as necessarily being present in the subject matter disclosed in the reference.

14.   I understand that prior art under 35 U.S.C. § 102(b) includes patents and printed publications that were available more than one year before the effective filing date of the '536 patent. The '536 patent was filed on January 28,

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