

TABLE OF CONTENTS

I. INTRODUCTION.....1

 A. Overview of the ‘309 Patent1

 B. Twitter Ignores the Context of the Patent: An Interactive, Online, Virtual Community2

II. STATEMENT OF DISPUTED MATERIAL FACTS4

 A. Disputed Facts Related to Patentability Under §1014

 B. Disputed Facts Related to Validity of Asserted Claims.....5

 C. Disputed Facts Related to Twitter’s Infringement of Asserted Claims6

III. ARGUMENT.....6

 A. The Asserted Claims Are Patentable Subject Matter Under §101.....7

 1. Asserted Claims Are Not Directed to an Abstract Idea8

 2. Machine or Transformation Test9

 a. Transformation Prong10

 b. Machine Prong.....10

 B. The Asserted Claims are Valid Over the Cited Prior Art11

 1. Twitter Has Not Provided Sufficient Summary Judgment Evidence11

 2. Who’s Who Does Not Anticipate Asserted Claims.....12

 a. Who’s Who is not a Virtual Community13

 b. Who’s Who Did Not Allow Interaction with the Profile.....13

 c. Who’s Who Did Not Allow Interaction Between Members.....14

 3. Asserted Claims Not Obvious16

 a. Secondary Considerations of Non-Obviousness.....17

 4. Asserted Claims are Enabled.....19

C. Twitter Infringes the Asserted Claims20

 1. Obtaining Biographical Information About the Selected Member.....21

 2. Create a Personal Profile of the Selected Member22

IV. CONCLUSION23

CERTIFICATE OF SERVICE25

TABLE OF AUTHORITIES

CASES

Advanced Display Sys., Inc., v. Kent State Univ.,
212 F.3d 1277 (Fed. Cir. 2000).....12

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986).....4, 6

Apple Computer, Inc. v. Articulate Sys., Inc.,
234 F.3d 14 (Fed. Cir. 2000).....11

Atlas Powder Co. v. Ireco, Inc.,
190 F.3d 1342 (Fed. Cir. 1999).....12

Bilski v. Kappos,
130 S. Ct. 3218 (2010).....7, 8

Celotex Corp. v. Catrett,
477 U.S. 317 (1986).....6

Cybersource Corp. v. Retail Decisions, Inc.,
No. 04-CV-03268, 2011 U.S. App. LEXIS 16871 (Fed. Cir. Aug. 16, 2011) 8-10

Eli Lilly & Co. v. Teva Pharms. USA, Inc.,
619 F.3d 1329 (Fed. Cir. 2010).....19

Glaverbel Societe Anonyme v. Northlake Marketing & Supply, Inc.,
45 F.3d 1550 (Fed. Cir. 1995).....12

KSR Int'l Co. v. Teleflex Inc.,
550 U.S. 398 (2007).....16

Leapfrog Enters., Inc v. Fisher-Price, Inc.,
485 F.3d 1157 (Fed. Cir. 2007).....16

Lewmar Marine, Inc. v. Barient, Inc.,
827 F.2d 744 (Fed. Cir. 1987).....12, 15

Lucent Techs., Inc., v. Gateway, Inc.,
580 F.3d 1301 (Fed. Cir. 2009).....16

Marrin v. Griffin,
599 F.3d 1290 (Fed. Cir. 2010).....4

Markem-Imaje Corp. v. Zipher Ltd.,
 No. 2010-1305, 2011 U.S. App. LEXIS 18670 (Fed. Cir. Sep. 9, 2011)4

Markman v. Westview Instruments, Inc.,
 52 F.3d 967 (Fed. Cir. 1995).....21

Mas-Hamilton Group v. LaGard Inc.,
 156 F.3d 1206 (Fed. Cir. 1998).....11

Muniauction, Inc. v. Thomson Corp.,
 532 F.3d 1319 (Fed. Cir. 2008).....16

Pfizer, Inc. v. Teva Pharms. USA, Inc.,
 2011 U.S. Dist. LEXIS 90021 (Fed. Cir. August 12, 2011)17

Research Corp Techs. v. Microsoft Corp.,
 627 F.3d 859 (Fed. Cir. 2010).....8

Research Plastics, Inc. v. Fed. Packaging Corp.,
 421 F.3d 1290 (Fed. Cir. 2005).....21

Spectralytics, Inc. v. Cordis Corp.,
 2011 U.S. App. LEXIS 11981 (Fed. Cir. June 13, 2011)18

Star Sci., Inc. v. R.J. Reynolds Tobacco Co.,
 No. 2010-1183, 2011 U.S. App. LEXIS 17826 (Fed. Cir. 2011)17

Ultramercial, LLC v. Hulu, LLC,
 No. 2010-1544, 2011 U.S. App. LEXIS 19048 (Fed. Cir. Sep. 15, 2011) 8-10

Wyers v. Master Lock Co.,
 616 F.3d 1231 (Fed. Cir. 2010).....17

STATUTES

35 U.S.C. § 100(b)7

35 U.S.C. § 101 1, 4-5, 7, 23

35 U.S.C. § 103(a) (2006).....16

35 U.S.C. § 112.....19

35 U.S.C. § 282 (Supp. 2000).....11

Plaintiff VS Technologies, LLC (“Plaintiff” or “VS Technologies”) submits this Opposition to Defendant Twitter’s Motion for Summary Judgment and respectfully shows as follows:

I. INTRODUCTION

VS Technologies has asserted that Twitter infringes claims 1 and 5-10 (the “Asserted Claims”) of U.S. Patent No. 6,408,309 (“the ‘309 patent”). Twitter has moved for summary judgment on three separate grounds: the patentability, validity and infringement of the Asserted Claims. All of the Asserted Claims are directed to a method of creating an online, interactive virtual community on the Internet and are clearly drawn to patentable subject matter under 35 U.S.C. § 101. Further, the Asserted Claims are vastly different and easily distinguishable from the prior art raised by the Defendant in their Motion. Twitter’s primary prior art reference is a static directory, known as “Who’s Who”, which is in stark contrast with the interactive virtual community described in the ‘309 patent and recited in the claims. Lastly, Twitter infringes each of the Asserted Claims by providing an interactive virtual community through its website at www.twitter.com.

Twitter has provided **no evidence** to support any of its three arguments for summary judgment; instead it relies solely on attorney argument. The record is completely devoid of any expert testimony or other evidence of how one of ordinary skill in the art would understand the cited prior art and apply the claims to Twitter’s accused service. At a minimum, there are several issues of material fact that should preclude the granting of summary judgment.

A. Overview of the ‘309 Patent

Prior to the invention of the ‘309 patent, the primary means to learn information about other people in which one may be interested was through printed books or online materials

providing static information. Mr. Agarwal determined that the best way to learn about the experiences of others would be to create an online interactive virtual community within which people could provide and update information about themselves instantaneously and communicate with others within the virtual community in real time. The ability to allow real-time interaction with both a member's profile and with others in the community were key to creating a useful and thriving virtual community and deemed worthy of patent protection by the USPTO.

B. Twitter Ignores the Context of the Patent: An Interactive, Online, Virtual Community

The fundamental flaw in Twitter's argument is that it ignores the context of the patent specification, which repeatedly refers to an interactive, online virtual community. The Court need not look any further than the title of the patent, "Method and System for Creating an Interactive Virtual Community of Famous People", to understand the significance of the online and interactive nature of the invention. See Declaration of Corby Vowell ("Vowell Dec."), Exh. A at Title. The specification is replete with statements explaining that a virtual community is created online. For example, in the background of the invention, Mr. Agarwal recognizes the need to create such an online virtual community:

"With the advent of this explosion, it would be very useful to have an interactive online or virtual community of the famous or well-known people which would allow other members of the community to learn from the experiences of the famous people, and to be able to interact with them for educational purposes or to satisfy their own curiosity." Id. at col. 2, lines 12-17.

Mr. Agarwal reinforces this concept in the specification by stating:

"The principal object of the present invention is to provide a method and system for creating an interactive virtual or online community of famous people". Id. at col. 2, lines 24-26.

. . .

"Still yet a further object of the present invention is to provide a method and system for creating an interactive virtual profile of a person which allows the

person to interact with another person whose profile is also online.” Id. at col. 3, lines 12-15.

The Figures of the ‘309 patent likewise confirm that the invention is directed to a virtual community implemented on the Internet. The ‘309 patent explains that Figures 1-2 “illustrat[e] the method of the present invention”. Id. at col. 3, lines 35-36. This is not merely an embodiment of the invention, but instead represents the overall invention disclosed by Mr. Agarwal. The portion of the flow chart from Figure 2 shown below teaches that the profiles are published as part of the “virtual community on the Internet”:

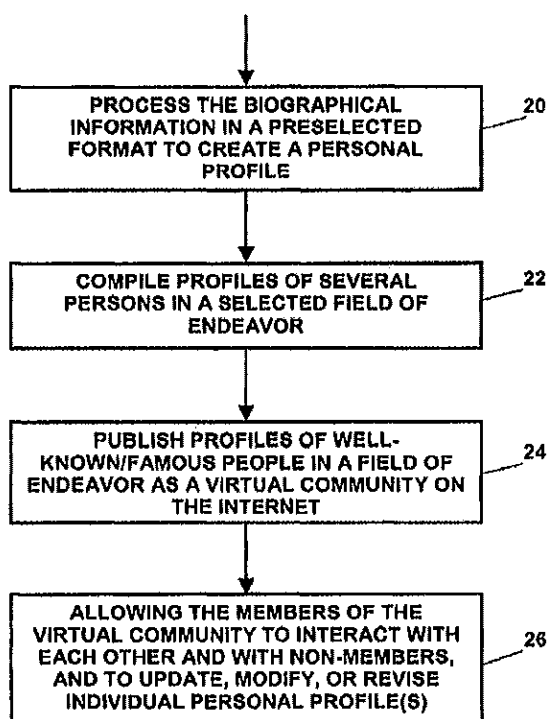


FIG. 2

Perhaps most compelling on this issue is the fact that the claims themselves require an interactive online or virtual community (step 24). The preamble of claim 1 reads, “A method of creating an interactive virtual community of people in a selected field of endeavor....” Id. at claim 1, preamble. When the preamble “breathes life” into the claim language or is necessary to

give life, meaning or vitality to the claim, it is deemed a limitation. *Marrin v. Griffin*, 599 F.3d 1290, 1300 (Fed. Cir. 2010). There can be no doubt that the term “interactive virtual community” breathes life into claim 1. Each of the other elements describes a step in creating the online interactive community.¹ It is axiomatic that claims are to be viewed in light of the specification and are to be read with a view to ascertaining the invention. *Markem-Imaje Corp. v. Zipher Ltd.*, No. 2010-1305, 2011 U.S. App. LEXIS 18670, at *21-22 (Fed. Cir. Sep. 9, 2011). There is simply no basis for Twitter to ignore this explicit description of the invention as an online interactive community.

II. STATEMENT OF DISPUTED MATERIAL FACTS

Twitter’s statement of “undisputed facts” are riddled with material factual issues that are disputed. Below is VS Technologies’ explanation of what is in dispute and why summary judgment is inappropriate. For purposes of summary judgment, VS Technologies’ evidence must be accepted as true, and all disputes must be resolved in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

A. Disputed Facts Related to Patentability Under §101

In paragraphs II(A)(2-5), Twitter incorrectly characterizes the invention of the ‘309 patent and states that the elements of claim 1 must be performed in order. This is not an issue of fact, but rather a question of law that has not been ruled upon by the Court and is irrelevant to Twitter’s Motion. In paragraph II(A)(6), Twitter states that claim 1 contains only a single reference to a tangible object. All of the limitations of claim 1, taken in context, refer to steps performed to create an interactive virtual community on the Internet. Each limitation of the

¹ VS Technologies’ infringement contentions and expert reports have always advanced that Twitter meets the limitation of the preamble.

claim is performed by a computer or server. Vowell Dec., Exh. A. at col. 2, ln 25-27; col. 5, ln 14-23.

The Asserted Claims recite patentable subject matter under 35 U.S.C. § 101. The claims are tied to a particular machine, which is the network of computers comprising the Internet, and “transform” biographical data into interactive online profiles to create an interactive virtual community on the Internet. Declaration of Mark Joseph (“Joseph Dec.”) at ¶5. The steps of the Asserted Claims cannot be performed entirely in the human mind and are not directed to an abstract idea. Id. at 6.

B. Disputed Facts Related to Validity of Asserted Claims

Twitter’s allegations in paragraph II(B)(8) are an inaccurate characterization of Mr. Agarwal’s actions in filing and prosecuting the ‘309 patent. Mr. Agarwal testified that he did not do a formal patent search in conjunction with filing the ‘309 patent because, considering how new the technology was, a patent search was unlikely to yield any meaningful results. Vowell Dec., Exh. B at 91, ln. 12 – 93, ln. 8. Instead, Mr. Agarwal performed a search for prior art references on the Internet. Id. at 97, lns. 1-11. In any event, Twitter’s false allegations in paragraph II(B)(8) are not relevant to any of the particular claims or defenses raised in this case.

In paragraphs II(B)(9-12), Twitter mischaracterizes the Who’s Who service which it cites as prior art. Twitter falsely states in paragraph II(B)(10) that Who’s Who services allowed profiled people to update and modify their profiles as claimed in the ‘309 patent. In reality, the Who’s Who service did not allow people to update their entry in real time, which is a required capability of the Asserted claims. Joseph Dec. at ¶9 and Exh. B at 8-9. Twitter also states in paragraph II(B)(10) that individuals profiled in Who’s Who could interact with one another. This paragraph makes a similar claim about the Leadership Directories service. Both of these

services merely listed an individual's external email address which does not enable members to interact within a virtual community. Joseph Dec. at ¶10 and Exh. B at 6-7.

C. Disputed Facts Related to Twitter's Infringement of Asserted Claims

In paragraph II(C)(13), Twitter claims that the '309 patent is limited to an exclusive community that people can join only if they are selected for inclusion. There is no such limitation in the Asserted Claims, nor has Twitter asked the Court to construe the claims to include such a limitation. See e.g., Vowell Dec., Exh. A at claim 1, 5-10.

In paragraph II(C)(17), Twitter claims that it does not obtain biographical information about a selected member of a field of endeavor or create a profile of a selected member. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Twitter creates a profile for a user when their initial account is set up and then creates additional profiles for the user at various times, such as after the user updates their biographical information. Joseph Dec. at Exh. A at 19-20; Joseph Dec. at Exh. C at 5-7.

III. ARGUMENT

"Summary judgment is only proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of fact exists when the trier of fact, viewing all the evidence in the light most favorable to the non-movant, could rationally find in favor of that party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-26 (1986); *Anderson*, 477 U.S. at 248-52. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a

directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Id.* at 255.

A. The Asserted Claims Are Patentable Subject Matter Under §101

The patent statute sets out broad criteria for patentable subject matter. Section 101 defines the subject matter that may be patented as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent thereof, subject to the conditions and requirements of this title.

35 U.S.C. § 101. Section 101 specifies four broad, independent categories of inventions or discoveries that are eligible for protection: processes, machines, manufactures, and compositions of matter. The Asserted Claims are directed to a process: “the method of creating an interactive virtual community”.²

Twitter’s argument that the Asserted Claims of the ‘309 patent are not patentable subject matter is predicated on a mischaracterization of the invention as a series of purely mental steps not tied to a particular machine or apparatus rather than as an interactive virtual online community on the Internet. Twitter mainly focuses on one method that has been used by courts in the past to determine whether subject matter is patentable - the “machine or transformation” test – and does not apply it properly, failing to provide **any** analysis of the transformation prong. *See Bilski v. Kappos*, 130 S. Ct. 3218, 3221 (2010). Twitter grossly inflates the import of this test and incorrectly implies that it is dispositive with respect to patentable subject matter. Twitter Motion at 11. In *Bilski*, the Supreme Court held that this is not the sole test for patentability, but rather “a useful and important clue” and “an investigative tool” for determining whether a process is patentable under § 101. *Bilski*, 130 S. Ct. at 3228.

² The patent statute defines “process” as: process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter or material. 35 U.S.C. § 100(b).

And just last week, the Federal Circuit in *Ultramercial, LLC v. Hulu, LLC*, No. 2010-1544, 2011 U.S. App. LEXIS 19048 (Fed. Cir. Sep. 15, 2011), explained that the use of this test for computer and Internet based inventions is disfavored and that a different analysis which focuses on whether the claims are simply directed to an abstract idea should be used:

While the machine-or-transformation logic served well as a tool to evaluate the subject matter of Industrial Age processes, that test has far less application to the inventions of the Information Age.

Ultramercial, 2011 U.S. App. LEXIS 19048 at *9. Thus, this Court's analysis should **not** focus on the machine or transformation test, even though the '309 patent satisfies both prongs. Instead, following Federal Circuit precedent, this Court should link to whether the claims are merely directed to an abstract idea. This is in accord with the Federal Circuit's holding in *Research Corp Techs. v. Microsoft Corp.*, 627 F.3d 859, 868-869 (Fed. Cir. 2010) – decided after *Bilski* – where the court found the claimed method to be patent eligible subject matter **without** any reference to the machine or transformation test. There, the court focused on abstractness and whether the subject matter of the invention was too abstract to be patentable. *Id.*

1. Asserted Claims Are Not Directed to an Abstract Idea

Here, as in *Research Corp. Techs.*, there is nothing to indicate that the online interactive community is an abstract idea. Joseph Dec. at ¶6. Twitter urges this Court to make such a conclusion with no basis whatsoever, having ignored the context of the invention and the elements as specifically written. Twitter relies on the decision in *Cybersource Corp. v. Retail Decisions, Inc.*, where the claims at issue were directed to a method for detecting credit card fraud which utilized information relating credit card transactions to Internet addresses. *See Cybersource Corp. v. Retail Decisions, Inc.*, No. 04-CV-03268, 2011 U.S. App. LEXIS 16871 (Fed. Cir. Aug. 16, 2011). The holding in *Cybersource* was based on the Federal Circuit's

conclusion that the steps of the method were performed **entirely** in the human mind. *Cybersource*, 2011 U.S. App. LEXIS 16871, at *18. But, the Asserted Claims of the '309 patent could not possibly be performed in such a fashion. An interactive virtual or online community on the Internet must occur in the physical world. Joseph Dec. at ¶6. Element (e) explicitly requires that the biographical information *be processed in a preselected format to create a personal profile*. Vowell Dec., Exh. A at claim 1 (emphasis added). The specification confirms this point by stating the profiles are created using "an appropriate software". *Id.* at col. 5, lines 14-16. If all of these steps were performed in the human mind, no member could view another member's profile or interact with another member. The '309 patent represents a non-abstract, patentable technological advancement. "Far from abstract, advances in computer technology--both hardware and software--drive innovation in every area of scientific and technical endeavor." *Ultramercial*, 2011 U.S. App. LEXIS 19048 at *16.

Even if a portion of the Asserted Claims could conceivably include a mental step, the subject matter of the '309 Patent is still patentable. This argument was specifically rejected in *Ultramercial*. The claims in *Ultramercial* recited a method for distributing copyrighted products, such as songs, movies or books, over the Internet free of charge to users in exchange for viewing advertising content. *Id.* at *1-2. In finding the subject matter therein patentable, the Federal Circuit made the following statement which should put this argument to rest:

The eligibility exclusion for purely mental steps is particularly narrow. *See Prometheus Labs.*, 628 F.3d at 1358 (noting that claims must be considered as a whole and that "the presence of mental steps [in a claim] does not detract from the patentability of [other] steps"). Unlike the claims in *CyberSource*, the claims here require, among other things, **controlled interaction with a consumer via an Internet website**, something far removed from *purely* mental steps.

Id., at *18 (emphasis added).

2. Machine or Transformation Test

The machine or transformation test provides that a process is patentable if “it is tied to a particular machine or apparatus” or if “it transforms a particular article into a different state or thing.” *Cybersource Corp.*, 2011 U.S. App. LEXIS 16871 at *7. In light of the Federal Circuit’s ruling in *Ulramercial*, the machine or transformation test is not particularly relevant. However, the claims of the ‘309 patent satisfy both prongs of this test. Twitter misapplies the first prong (the “machine” prong) and then completely ignores the second, as the Motion is devoid of any analysis of the invention’s transformation.

a. Transformation Prong

The Asserted Claims transform raw biographical information into online interactive profiles that can be accessed on the Internet. Joseph Dec. at ¶5. Element (e) of claim 1 specifies that the biographical information is processed in a preselected format. Vowell Dec. at Exh. A, claim 1. This element requires that the biographical information be processed to transform it into an online interactive profile. The interactive profiles are then made accessible on the Internet. By providing interactive profiles of the members on the Internet and allowing interaction with the profiles, the ‘309 patent describes how a virtual community is created. Members can also interact with each other over the Internet. Joseph Dec. at ¶ 5.

b. Machine Prong

The Asserted Claims likewise meet the machine prong of the test, because the claims are tied to particular computer network, *i.e.*, the Internet, because the invention is aimed at creating an interactive online virtual community. Joseph Dec. at ¶5. The biographical information is processed by a computer to generate a profile in a certain format “by processing the information

from the selected member and using an appropriate software”. Vowell Dec., Exh. A at col. 5, lines 14-16.

Under controlling Federal Circuit precedent relating to the relevant analysis, the ‘309 Patent involves patentable subject matter such that Twitter’s Motion for Summary Judgment on this basis must be denied.

B. The Asserted Claims are Valid Over the Cited Prior Art

A patent is presumed valid. 35 U.S.C § 282 (Supp. 2000). “One attacking the validity of a patent must present clear and convincing evidence establishing facts that lead to the legal conclusion of invalidity.” *Apple Computer, Inc. v. Articulate Sys., Inc.*, 234 F.3d 14, 26 (Fed. Cir. 2000). “While a patentee has the burden of going forward with rebuttal evidence once a challenger has presented a *prima facie* case of invalidity, the presumption of validity remains intact and the ultimate burden of proving invalidity remains with the challenger throughout the litigation.” *Mas-Hamilton Group v. LaGard Inc.*, 156 F.3d 1206, 1216 (Fed. Cir. 1998). Twitter has not presented any competent summary judgment evidence on which this Court could rule in its favor. Twitter cites to no expert testimony or other evidence of how one of ordinary skill in the art would apply the prior art.

1. Twitter Has Not Provided Sufficient Summary Judgment Evidence

Twitter’s principal invalidity argument is that the Asserted Claims are invalid in light of the Who’s Who computerized service. Yet the only evidence it provides is a collection of archived web pages describing Who’s Who along with attorney argument and conjecture about how the system worked. Twitter Motion at Exh. 8. Twitter has not cited to any testimony from a representative of the company that owned or operated the Who’s Who service to explain how the

system operated prior to the critical date of February 23, 2000 (the filing date of the '309 patent). Nor has Twitter submitted any expert testimony in support of its position. A patent is only anticipated if a single piece of art allows a person of ordinary skill to practice all the elements of the claims. *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987). Here, Twitter has not provided any evidence from a person of skill in the art that this is the case. *See Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1277, 1282 (Fed. Cir. 2000) (anticipatory prior art must “describe each and every element of the invention ... such that an ordinary person of skill in the art could practice the invention without undue experimentation.”). Twitter merely provides attorney argument which is legally insufficient to support a finding of summary judgment. *Glaverbel Societe Anonyme v. Northlake Marketing & Supply, Inc.*, 45 F.3d 1550, 1562, (Fed. Cir. 1995) (“there must be sufficient substance, other than attorney argument, to show that the issue requires trial.”).

In sharp contrast, VS Technologies presents significant evidence to show why the Asserted Claims are not invalid and the genuine issues of material fact regarding the scope of the prior art and how it relates to the Asserted Claims. VS Technologies relies on the expert testimony of Dr. Mark Joseph to explain the distinctions between the Who's Who service and the '309 patent and why the '309 patent is enabling.

2. Who's Who Does Not Anticipate Asserted Claims

Anticipation is a question of fact. *Atlas Powder Co. v. Ireco, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999). And as Dr. Joseph explains through competent summary judgment evidence, the Who's Who service to which Twitter cites is merely a computerized directory, similar to the printed version or an old yellow pages phone book, which was then placed on the Internet to make it easier for users to access the information. The entries for particular individuals are not

interactive profiles representing people in a community because, simply put, there was no virtual community. Joseph Dec. at ¶8 and Exh. B at 5-6, 8-9. Even if characterized as a community, there was no way for members to interact with their profiles in real time or interact with one another within the community. Joseph Dec. at ¶9-10, Exh. B at 8-10.

a. Who's Who is not a Virtual Community

The Who's Who service is not a virtual community as explicitly recited in the preamble of the Asserted Claims. Instead, Who's Who is a directory that lists static information about famous people, similar to an encyclopedia. Joseph Dec. at Exh. B at 8-10. In the Who's Who service there are no profiles that act as virtual representations of the individuals in an online community. Joseph Dec. at ¶8. There is no online interaction between members and their profiles, nor interaction between members of a community. Joseph Dec. at ¶9-10. As Dr. Joseph explains:

The Who's Who Online reference was a website that made the information from the print versions of the Who's Who series of books available on the Internet.

• • •

Who's Who Online is not an interactive virtual community as used in the patent.

Joseph Dec., at Exh. B at 8-9. Twitter has not addressed this limitation and has provided no evidence that a person of ordinary skill in the art would consider Who's Who an online, virtual community.

b. Who's Who Did Not Allow Interaction with the Profile

The Who's Who service does not allow the selected member to interact with the profile. Element (g) of the '309 patent requires: "*allowing* the selected member to interact with the profile." Vowell Dec. at Exh. A at claim 1 (emphasis added). Regardless of whether the Court elects to construe this element or how it may do so, is irrelevant for ruling on Twitter's Motion.

Because the claim element requires “allowing” the selected member to interact with their profile, the interactive virtual community must at least include the capability for a user to update their profile in real time. Joseph Dec. at ¶9. Thus, while all interactions need not be in real time, the capability must be there. Twitter has not proven and cannot substantiate that Who’s Who had this capability. On the contrary, the sparse documentation relied upon by Twitter explains that any changes to entries for a particular individual would need to be made by the staff at Who’s Who:

Can I correct my entry if I make an error?

This is the 21st Century equivalent of typesetting: please key data carefully and be sure to use capital letters to begin all proper nouns unless they are normally written entirely in lower case. If you catch an error immediately after submitting the data, (when you “search” your record, go back immediately and rekey the data. We’ll look at the most recent entry, and delete the earlier one, provided that they are entered on the same date. Twitter Motion at Exh. 8 (TWITTER00005519).

This passage does not describe the *capability* for a member to make an update to a profile in real time. Instead, a person working for Who’s Who must look at the two entries and determine which one to display on the website. The user is not actually interacting directly with the profile, but submits the information to a Who’s Who representative who then determines whether or not to make the change. Joseph Dec. at ¶9.

c. Who’s Who Did Not Allow Interaction Between Members

The Who’s Who directory did not allow for the interaction within the virtual community between the community members called for by claim 9 of the ‘309 patent, and Twitter has provided no evidence to the contrary. The only feature of Who’s Who to which Twitter points is that an individual’s email address may have been listed in their entry in the directory. Twitter Motion at 18. Twitter argues that this allowed other people to interact with an individual listed in the directory by sending them an email to the address shown on their entry. *Id.* However, including an external email address for an individual does not provide the ability for members to

interact **within** a virtual community. Joseph Dec. at ¶10. It would only provide information that would allow another individual to contact them through an external email system. Joseph Dec. at Exh. B at 6. As Dr. Joseph explains:

This is no different from a phone book listing a phone number where a person can be reached via the telephone network, or even the address listing in the phone book at which a person may receive a letter.

Id. at 6.

Twitter also refers to email links displayed on a web page in a different system called Leadership Directories to support their anticipation argument. Twitter Motion at 18. However, the law is clear that for a reference to anticipate, it must disclose all of the claim elements. *Lewmar Marine, Inc.*, 827 F.2d 744 at 747. There is no basis to combine any teachings of the prior art Leadership Directories system with the Who's Who service for an anticipation analysis.

Finally, Twitter seeks to introduce confusion on this issue by citing to excerpts of the inventor's deposition testimony which have been taken out of context. Twitter cites to a short passage of Mr. Agarwal's testimony despite the fact earlier in the deposition Mr. Agarwal testified that he did not know how the particular prior art system being discussed actually worked and that the interaction between members must be *within* the virtual community. Vowell Dec., at Exh. B at 223, ln. 3 – 225 ln. 7. Later in his deposition, Mr. Agarwal actually confirmed that external email systems did not constitute interacting within a virtual community:

Q. Well, you said that in one of your prior answers. You said that if people just are interacting by email, that's not interacting as part of the virtual community.

A. Right.

Q. What do you mean by that?

THE WITNESS: Generally, the emails are not part of the virtual community where you have the profile.

Id. at 234, ln. 24 – 235 ln. 7. Based on the state of the summary judgment record, it can hardly be said as a matter of law that Who's Who anticipates any of the Asserted Claims.

3. Asserted Claims Not Obvious

Twitter's contention that the Asserted Claims are obvious in light of the Who's Who services is equally devoid of summary judgment evidence and again relies solely on attorney argument. For a determination of obviousness the Court must decide whether the subject matter of the claimed invention would have been obvious at the time the invention was made to a person of ordinary skill in the art to which the subject matter of the invention pertains. 35 U.S.C. § 103(a) (2006); *see also KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 415-16 (2007). "Underpinning [the] legal issue [of obviousness] are factual questions relating to the scope and content of the prior art, the differences between the prior art and the claimed invention, the level of ordinary skill in the art, and any relevant secondary considerations [of non-obviousness], such as commercial success, long-felt need, and the failure of others. *Lucent Techs., Inc., v. Gateway, Inc.*, 580 F.3d 1301, 1310 (Fed. Cir. 2009). Twitter has offered no such analysis; instead, simply declaring that if Who's Who does not anticipate, then it must be obvious.

Rather than citing to evidence, Twitter cites to a series of cases beginning with the Supreme Court's decision in *KSR*, in an attempt to fabricate an argument that the Asserted Claims were obvious. In each of these cases relied upon by Twitter, the claims simply covered an arrangement of old elements, each performing the same function it had been known to in the past. As Twitter notes in its Motion, the patent at issue in *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1319 (Fed. Cir. 2008) simply incorporated web browsers into prior-art auction processes. Twitter Motion at 19-20. *Leapfrog Enters., Inc v. Fisher-Price, Inc.*, 485 F.3d 1157

(Fed. Cir. 2007) case is equally inapposite because the patent at issue only applied modern electronics to older mechanical devices. Twitter Motion at 20.

The patents cited in these cases are dramatically different than the invention disclosed in the '309 patent, which teaches a method to create an entirely new type of system - an online and interactive virtual community, having features that no other system previously provided. Joseph Dec. at Exh. B at 5. While virtual communities may be ubiquitous now, in 2000 at the time Mr. Agarwal filed his patent, there simply were no interactive online virtual communities. The invention of the '309 patent was a significant departure from the Who's Who service and other online directories. Joseph Dec. at ¶8-9 and Exh. B at 5.

Once again, VS has submitted competent summary judgment evidence to counter Twitter's bald allegations. As one of ordinary skill in the art, Dr. Joseph would not consider the Asserted Claims obvious. Dr. Joseph considered the scope of the prior art and articulated the differences between the prior art and the claimed invention to conclude that:

With a proper understanding of the scope of the art presented, the asserted claims are not obvious over any combination of the references.

Joseph Dec. at Exh. B at 39. *See also Star Sci., Inc. v. R.J. Reynolds Tobacco Co.*, No. 2010-1183, 2011 U.S. App. LEXIS 17826, at *23 (Fed. Cir. 2011) ("whether prior art invalidates a patent claim as obvious is determined from the perspective of one of ordinary skill in the art.").

a. Secondary Considerations of Non-Obviousness

Even if Twitter could somehow establish a prima facie case that the Asserted Claims are obvious in light of Who's Who – which it cannot – the analysis does not end there. At that point, the burden shifts to the patentee to present evidence of secondary considerations of non-obviousness and a nexus between such considerations and the Asserted Claims. *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010); *Pfizer, Inc. v. Teva Pharms. USA, Inc.*, 2011

U.S. Dist. LEXIS 90021, at *87-88 (Fed. Cir. August 12, 2011). Examples include, among others, commercial success, long felt but unsolved needs, and failure of others. *Id.* The Federal Circuit has noted that evidence of secondary considerations may often be the *most* probative and cogent evidence in the record to counter a claim of obviousness. *Spectralytics, Inc. v. Cordis Corp.*, 2011 U.S. App. LEXIS 11981, at *17 (Fed. Cir. June 13, 2011). Here, there is considerable evidence of commercial success and its nexus to the Asserted Claims to defeat summary judgment.

Twitter has achieved commercial success with its Twitter service. See Vowell Dec. at Exh. C at Response No. 6. [REDACTED]

There is also a clear nexus between the commercial success of Twitter's service and Twitter's infringing activity. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The nexus between Twitter's commercial success and the infringing technology is clear and is confirmed by Twitter's own internal research. In the face of this compelling evidence on the issue of commercial success, at this stage of the proceedings, Twitter cannot establish as a matter of law that the Asserted Claims are obvious. Twitter is free to argue its position to the jury, but this is not the place for such argument.

4. Asserted Claims are Enabled

Twitter also argues in the alternative that the Asserted Claims are not enabled under 35 U.S.C. § 112. To be enabling, the specification must disclose enough information to allow a person of ordinary skill in the art to make and use the claimed invention. *Eli Lilly & Co. v. Teva Pharms. USA, Inc.*, 619 F.3d 1329, 1342 (Fed. Cir. 2010).

The '309 patent provides extensive detail about how the steps of the claimed method are performed and how they create an interactive virtual community. The '309 patent describes that each of the features of the virtual community are implemented online on the Internet. Vowell Dec. at Exh. A at col. 2, lns. 25-27; Fig. 2. The specification teaches how a list of members in a particular field of endeavor may be selected and that a list of selected members is created. Id. at col. 3, ln. 58 – col. 4, ln. 7. The '309 patent discloses how biographical information may be obtained about a user and then processed using appropriate software to create a profile for the user. Id. at col. 4, lns. 11-20; col. 5, lns. 14-17. The specification also explains how the personal profiles of the members are published on the Internet and how members may update their profiles in real time. Id. at col. 5, lns. 22-23; col. 5, lns. 24-34; col. 2, lns. 12-20. Taken together, the written description and the Figures of the '309 patent teach one of ordinary skill how to make and use the invention. This is the opinion of Dr. Joseph:

As one of skill in the art, I can practice the invention of the '309 patent. From the disclosure in the specification, I am able to design and implement a virtual community on the Internet that provides the features set forth in the Asserted Claims without undue experimentation.

Joseph Dec. at ¶12; see also Joseph Dec. at Exh. B at 40-41.

Dr. Joseph's testimony stands uncontested by someone of ordinary skill in the art. Twitter has not provided any evidence for its assertion that the claims are not enabled. To the extent Twitter attempts to rebut this testimony in its Reply, VS objects to such untimely efforts as violating Federal Rule of Civil Procedure 56.

C. Twitter Infringes the Asserted Claims

Twitter concludes its Motion with a brief section in which it argues that it does not infringe the Asserted Claims. Here again, Twitter fails to cite to any competent summary judgment evidence to support its position. Twitter offers to no expert testimony, documents or

other evidence to establish how the Twitter service operates or to show that it does not meet the limitations of the Asserted Claims. Twitter's counsel simply makes bald, unsubstantiated statements about the operation of Twitter's website.

An infringement analysis involves a two-step process: 1) the court first determines the meaning of disputed claim terms; and 2) compare the accused device to the claims as construed. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995). In order to literally infringe, as Twitter does, each element of the claim must be present in the accused device or process. *Research Plastics, Inc. v. Fed. Packaging Corp.*, 421 F.3d 1290, 1297 (Fed. Cir. 2005).

Twitter's non-infringement position relates to two of the elements of claim 1: (1) that it does not meet the "obtaining biographical information" step; and (2) that it does not "create a personal profile" step. Both of these arguments are based on a flawed claim construction position which has now been rejected by this Court. Twitter Motion at 23-24. Given the Court's declination to construe these phrases at all, let alone in the manner proscribed by Twitter with certain negative limitations, Twitter's arguments for non-infringement necessarily fail. Twitter has not set forth any non-infringement argument based on the plain meaning of the disputed limitations. On the other hand, VS Technologies has provided the Court with the expert report of Dr. Joseph explaining in detail how Twitter infringes the Asserted Claims based on the plain and ordinary meaning of the terms.³

1. Obtaining Biographical Information About the Selected Member

Claim 1 requires obtaining biographical information "about" the selected member; not "from" the selected member. As the Court aptly noted at the claim construction hearing by declining to adopt Twitter's proposed negative limitation, the claims of the '309 patent are not

³ For a full explanation of how Twitter's service operates, see Joseph Dec. at Exh. A at 8-12.

limited to obtaining the information from a particular source or at a particular time. The information can be from the user directly or from Twitter's own database where it stores biographical information about users, or from a combination of the two. The plain and ordinary meaning of the term imposes no limitation.

[REDACTED]

This is not in dispute. Given the Court's ruling, Twitter meets this limitation in both instances.

2. Create a Personal Profile of the Selected Member

At the Claim Construction Hearing, the Court concluded that this phrase likewise did not need to be construed. The Court specifically rejected Twitter's proposed negative limitation which would have excluded displaying a personal profile that had previously been produced and stored in computer memory. Twitter's proposed negative limitation is not applicable to the infringement analysis. Based on the plain and ordinary meaning of this phrase, Twitter practices this step in multiple fashions.

[REDACTED]

██████████ User's can access their personal profile at any time to update, modify, or revise the biographical information contained therein. Joseph Dec. at Exh. A at 22.

Twitter next practices this step during the course of the accused "browse interests" feature. ██████████

██████████ Twitter utilizes three different profile formats, including a full profile showing all of the user's biographical information, a mini profile showing some of the user's biographical information, and a further abbreviated version of a profile during the "browse interests" feature. The three different types of profiles are depicted in screenshots in Dr. Joseph's Infringement Report. See Joseph Dec. at Exh. A at 19-21.

Even if Twitter were to argue that it only creates a profile after the user first provides biographical information and does not create a profile when another user's seeks to view an existing member's profile such as during the "browse interests" feature, Twitter still practices this step of the method in a third fashion. Twitter again "creates a personal profile" for the user when the user updates, modifies, or revises his or her biographical information. Joseph Dec. at ¶14 and Exh. C at 5-6.

In light of the Court's rejection of Twitter's attempt to read their system out of the Asserted Claims, VS is hard-pressed to understand why Twitter has not withdrawn its Motion, at least as to any alleged non-infringement. And because it has not done so, VS is forced to respond to arguments that are now readily not in dispute.

IV. CONCLUSION

The '309 patent describes a method and system for creating a virtual interactive community' on the Internet in which members may interact with their profile and with each other.

The Asserted Claims are patentable subject matter under § 101; they are valid in light of the cited prior art; and are infringed by Twitter. At a minimum there are multiple issues of material fact with respect to each of these points. Accordingly, VS Technologies respectfully requests that the Court deny Twitter's Motion in its entirety.

Dated: September 19, 2011

Respectfully Submitted,

/s/ Amy S. Owen

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO TWITTER'S MOTION FOR SUMMARY JUDGMENT** was electronically filed with the Clerk of Court using the CM/ECF system this 19th day of September, 2011, which will then send a notification of such filing (NEF) to the following:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Norfolk Division)**

VS TECHNOLOGIES, LLC,)	
)	
Plaintiff)	
	)	CIVIL CASE NO: <u>2:11cv43 (HCM)(FBS)</u>
vs.)	
)	
TWITTER, INC.)	
)	
Defendant.)	

**DECLARATION OF CORBY R. VOWELL IN SUPPORT OF
PLAINTIFF’S OPPOSITION TO TWITTER’S MOTION FOR SUMMARY JUDGMENT**

I, Corby R. Vowell, declare as follows:

1. My name is Corby R. Vowell. I am over 18 years of age and competent to testify to the facts stated herein. I have personal knowledge of the facts stated herein, and they are true and correct.

2. I am an attorney of record for the Plaintiff in the above captioned lawsuit.

3. Attached as Exhibit A is a true and correct copy of United States Patent No. 6,408,309 (the “’309 Patent).

4. Attached as Exhibit B is a true and correct copy of excerpts from the Deposition of Dinesh Agarwal on July 27, 2011.

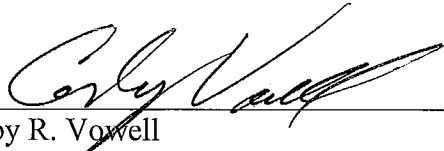
5. Attached as Exhibit C is a true and correct copy of VS Technologies, LLC’s Responses to Twitter’s First Set of Interrogatories.

6. Attached as Exhibit D is a true and correct copy of the Expert Report of Terry L. Musika, served by Twitter, Inc. on September 1, 2011

7. Attached as Exhibit E is a true and correct copy of excerpts from the Deposition of Joshua Elman on July 7, 2011.

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

Executed this 19th day of September, 2011, in Fort Worth, Texas.



Corby R. Vowell

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US006408309B1

(12) **United States Patent**
Agarwal

(10) **Patent No.:** **US 6,408,309 B1**
 (45) **Date of Patent:** **Jun. 18, 2002**

(54) **METHOD AND SYSTEM FOR CREATING AN INTERACTIVE VIRTUAL COMMUNITY OF FAMOUS PEOPLE**

5,956,717 A * 9/1999 Kraay et al. 379/188
 6,340,978 B1 * 1/2002 Mindrum 345/733

* cited by examiner

(76) Inventor: **Dinesh Agarwal**, 5594 Blake House Ct., Burke, VA (US) 22015

Primary Examiner—Jack Choules
Assistant Examiner—Linh Pham

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(74) *Attorney, Agent, or Firm*—Dinesh Agarwal, P.C.

(57) **ABSTRACT**

A method and system for creating an interactive virtual community of famous people, or those people who wish to attain the status of a famous person, in a field of endeavor, such as arts, accounting, animal rights, business, education, engineering, entertainment, financing, government affairs, human rights, legal, medical, philanthropy, politics, religion, research, science, sports, etc. The virtual community of the present invention is unique in that the members of the virtual community can update, modify or revise their individual profile, and interact with other members of the virtual community, as well as the non-members of the virtual community.

(21) Appl. No.: **09/511,069**

(22) Filed: **Feb. 23, 2000**

(51) **Int. Cl.**⁷ **G06F 17/00; G06F 7/00**

(52) **U.S. Cl.** **707/104.1**

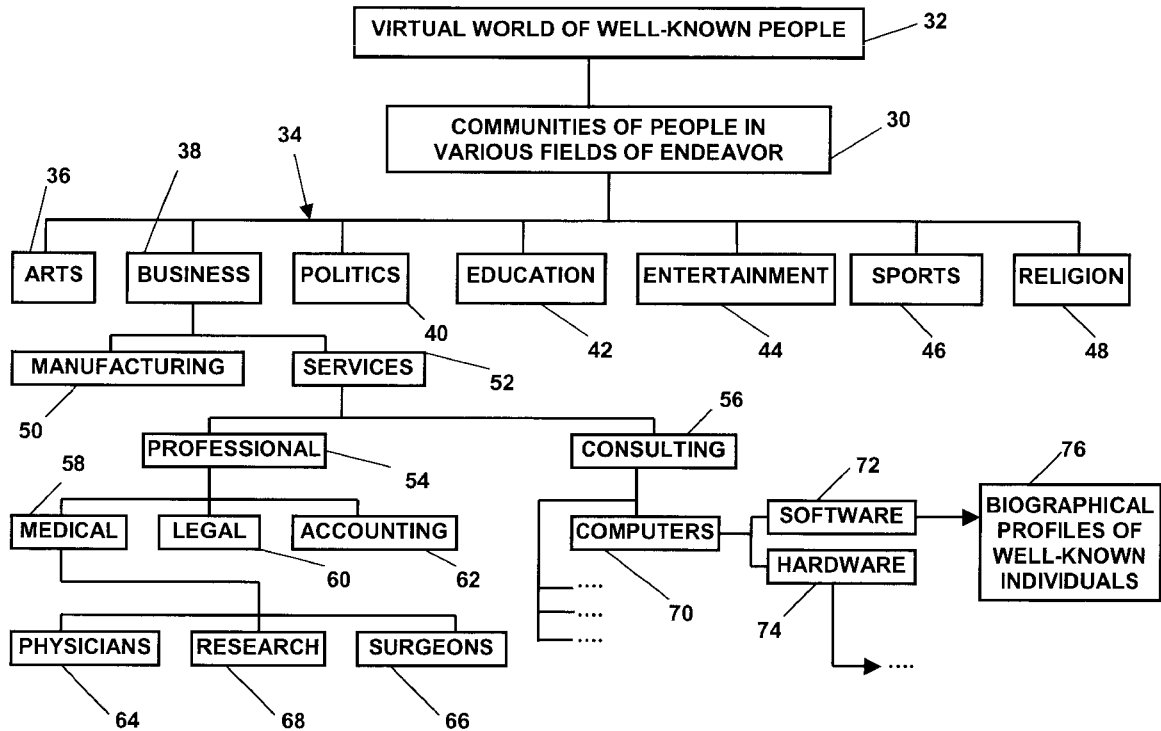
(58) **Field of Search** 707/1-10, 100-104.1, 707/500-541; 345/689, 700, 733-767, 520, 536-538, 1.1-2.1, 961-967

(56) **References Cited**

U.S. PATENT DOCUMENTS

5,675,788 A * 10/1997 Husick et al. 707/1

20 Claims, 4 Drawing Sheets



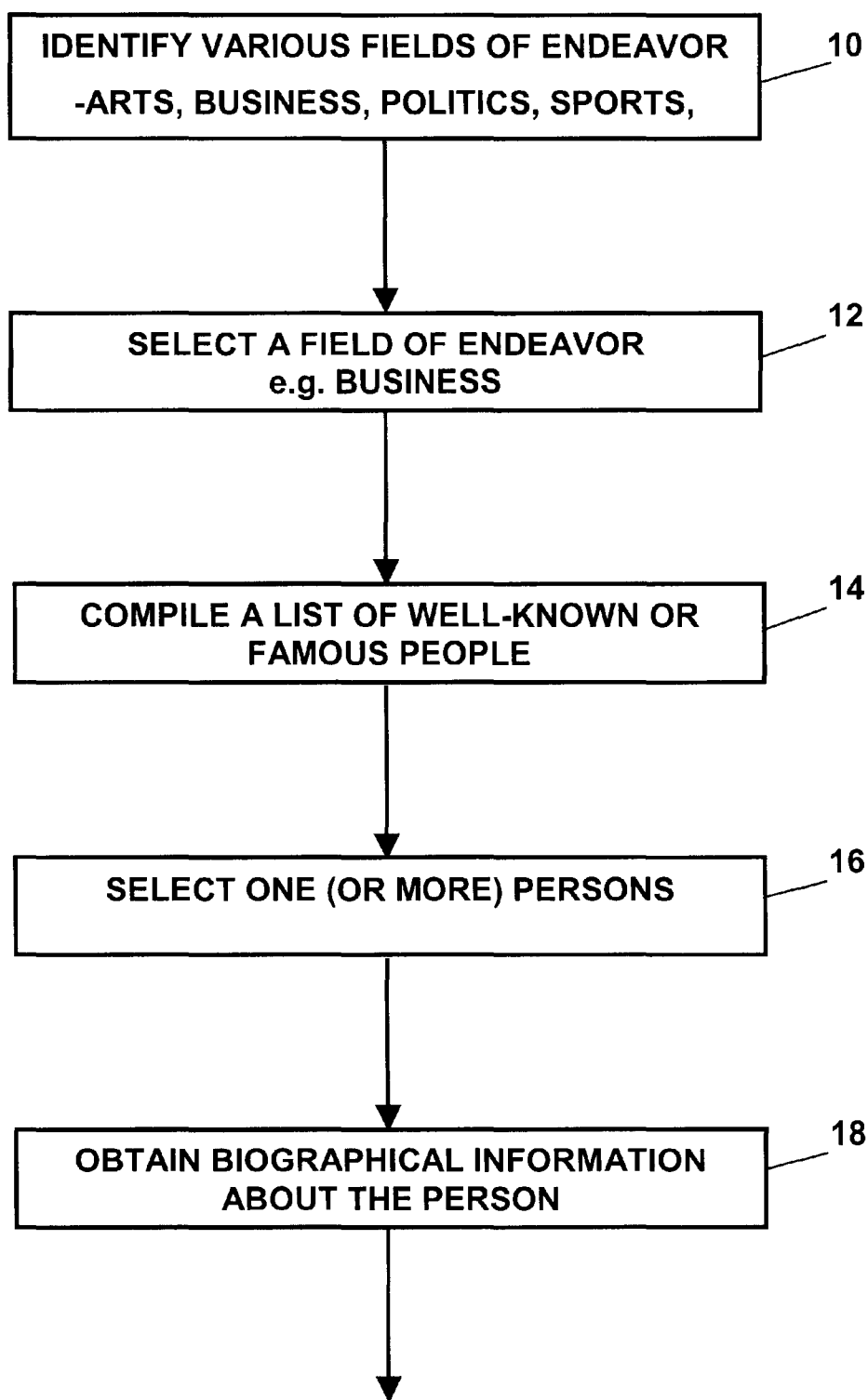


FIG. 1

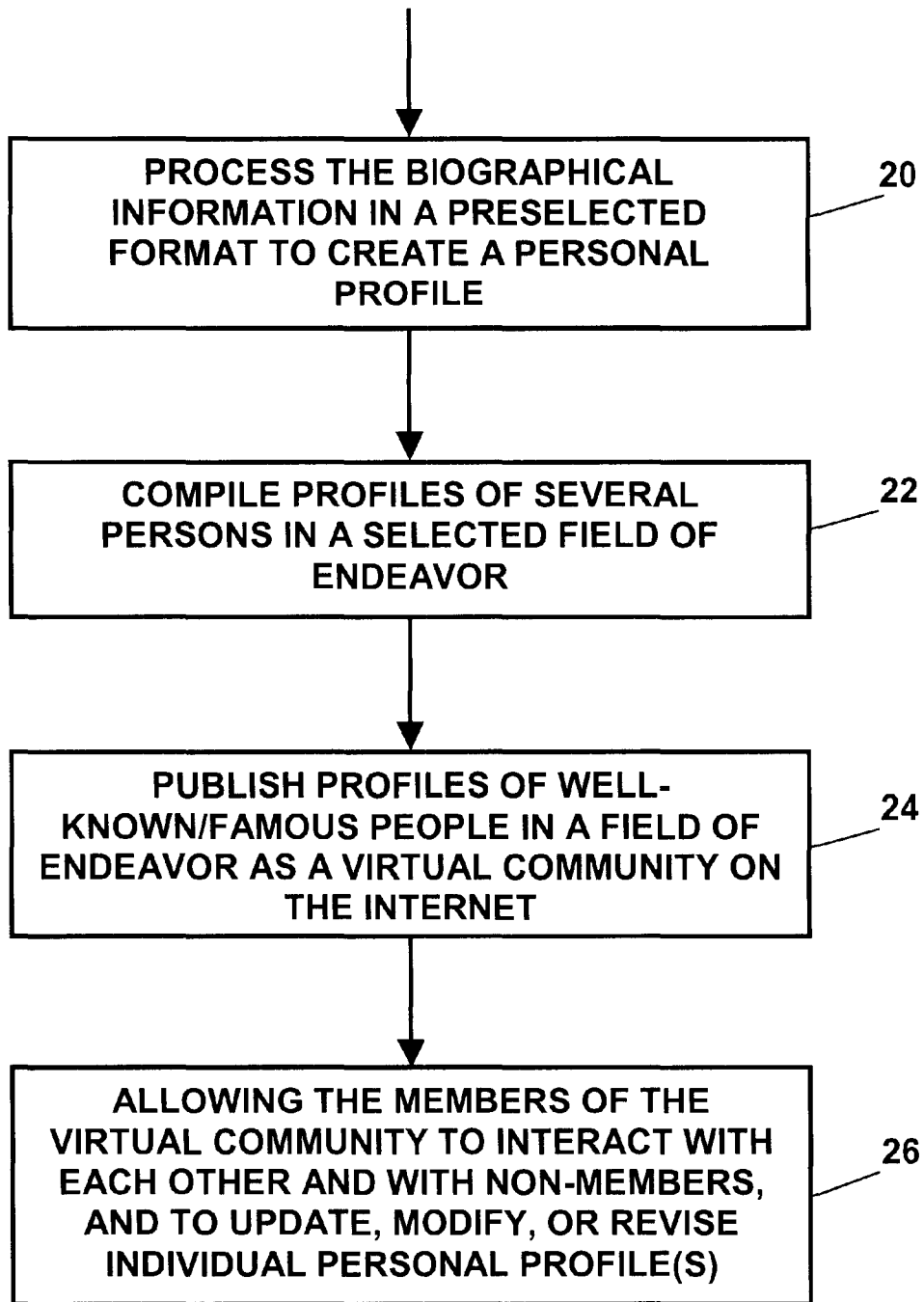


FIG. 2

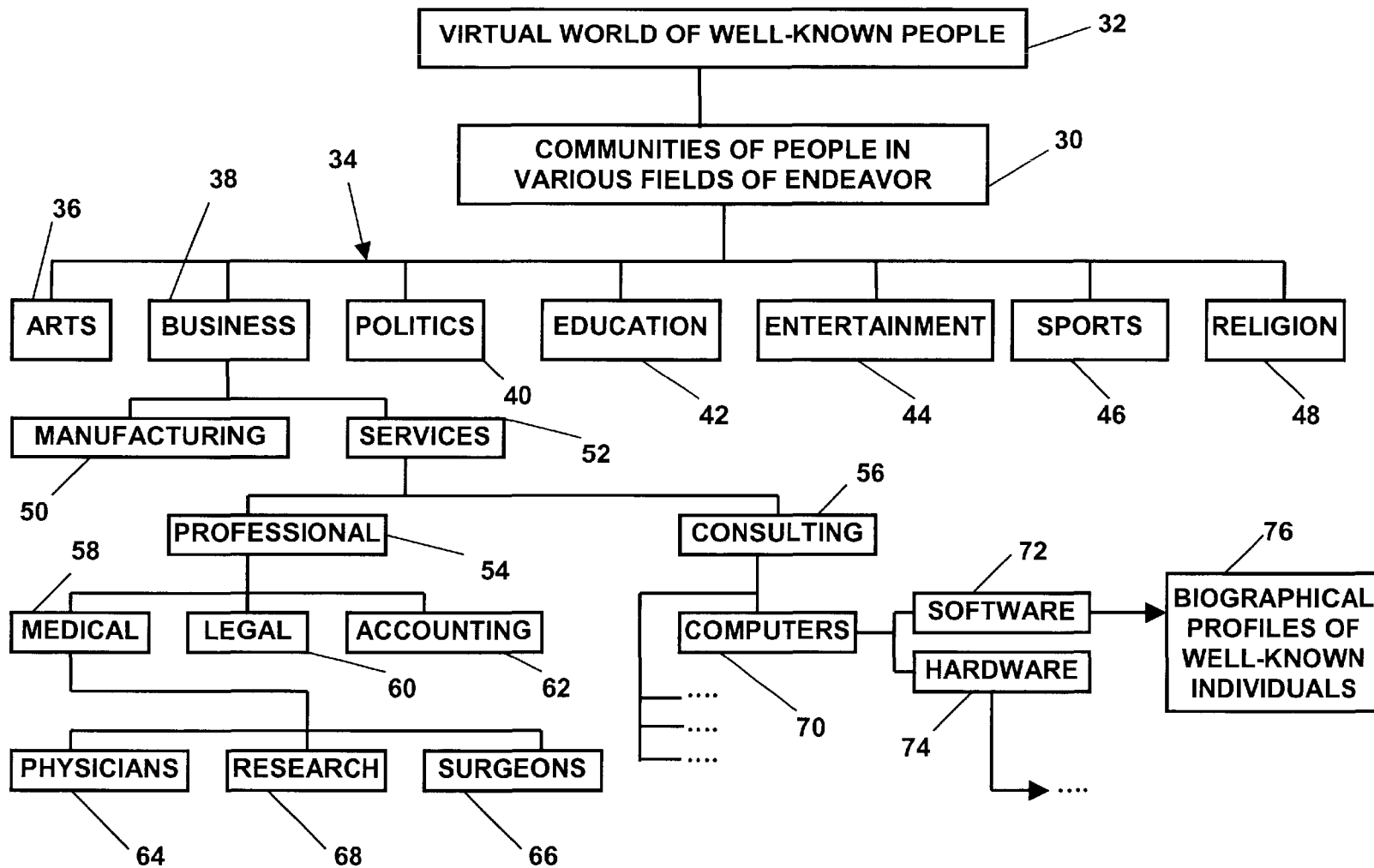


FIG. 3

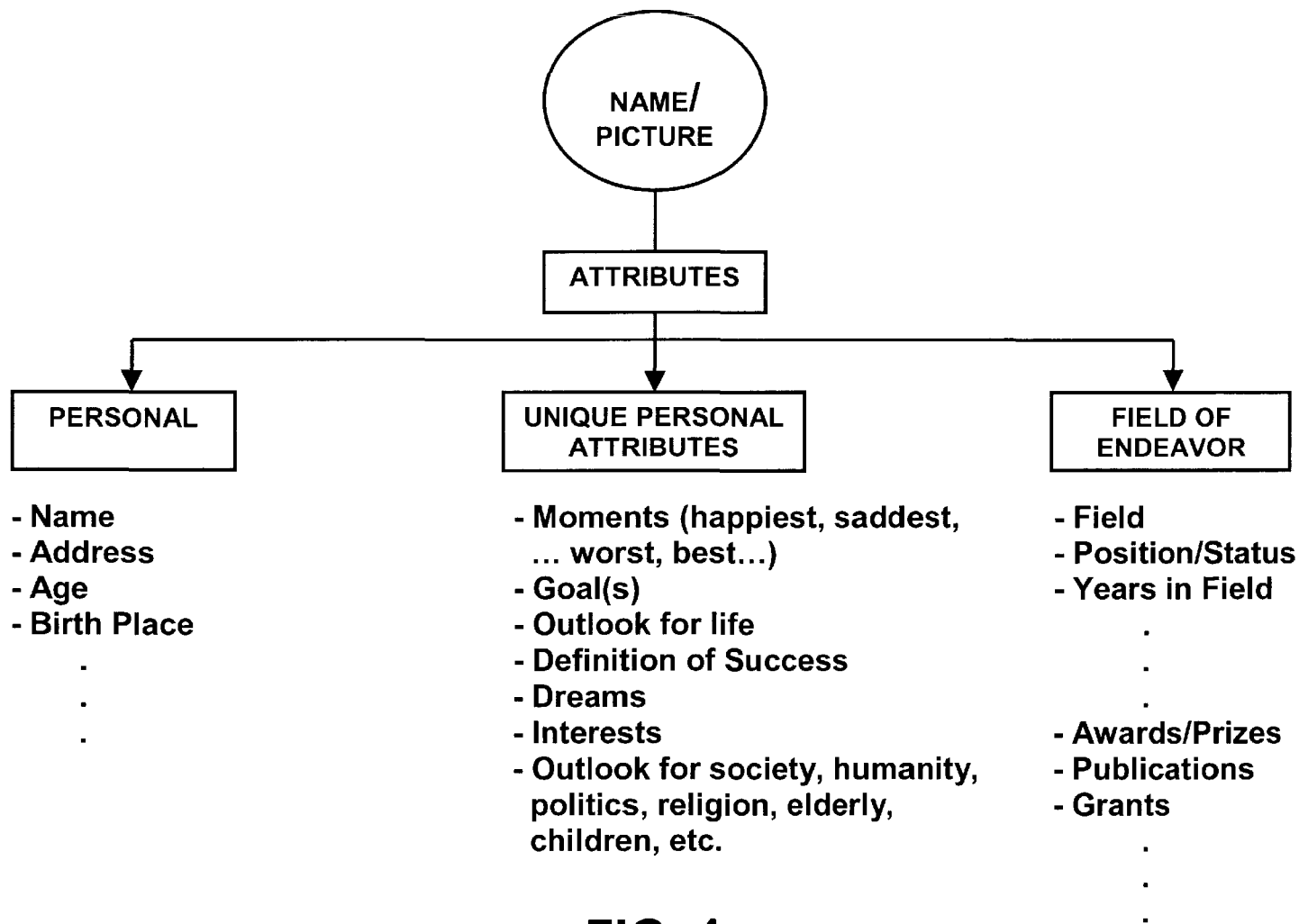


FIG. 4

US 6,408,309 B1

1

METHOD AND SYSTEM FOR CREATING AN INTERACTIVE VIRTUAL COMMUNITY OF FAMOUS PEOPLE

FIELD AND HISTORICAL BACKGROUND OF THE INVENTION

The present invention is directed to creating biographical profile of people, and more particularly to a method and system for creating an interactive virtual community of famous people.

The depth of human curiosity is deep and enthusiasm for eagerness to learn about other beings in general, and human beings in particular, is high. While on one hand, psychologists and behavioral scientists continue to do more research to learn and understand human behavior, countless engineers and scientists continue to explore the outer world in an effort to identify the presence of life there and to understand other beings, if any.

In our quest to learn and understand others, we publish information about other people via various methods, including the print media and through radio and television and the most recent technological medium, the global network of computers, widely known as the "World Wide Web" or the "Internet".

While the present techniques offer several media to choose from to learn about the life experiences of another person, the information provided is not sufficient, and further does not present an opportunity for the people in the community to engage in an interactive dialogue with the person. In other words, although the biographical information about a person is presently available in various media, the information is mostly useful for research purposes. For example, a history student can research books, archived news media, or various online sources providing similar information, to learn, for example, about the life experiences of great leaders, such as Gandhi, Martin Luther King, Jr., John F. Kennedy. In the same manner, a student conducting research in the area of science, can research related books, print media, and/or online sources to learn more about scientists, etc.

The phenomena of publishing biographical narrations is generally not limited to publishing the account of a person's life experiences posthumously. In modern times, the experiences of a person are often reported via radio, print and television media. Many authors also publish books reciting the life experiences of another person. The conventional biographical accounts of a person are, however, limited in that the author typically does not return to the same person, either to update the earlier published account, or to present an interactive approach to the more recent life experiences of that person.

In particular, there presently is no method or system that allows a person either to update his/her biographical account or to communicate with another member from the community for interaction purposes. For instance, it would be extremely useful for the community to learn about a famous person's experiences since the earlier account. It would likewise be useful for that famous person to be able to modify, update, etc., his or her earlier version, as needed.

Another drawback of the conventional reporting or publication of the life experiences of a person is that presently they are rendered for only those people who have become famous or have attained a certain recognizable status in the community. While in the old days, generally only a limited number of people were able to attain the status of a famous person or a similar recognizable status in the community, in

2

recent times the number of people who are becoming "famous", or are attaining a recognizable or known status in the community has grown by monumental proportions. This is particularly true in the area of telecommunications and information technology where the revolution of the World Wide Web or Internet has very quickly elevated many people to become famous or attain a very recognizable or known status in, for example, the business and financial world.

The explosion of the Internet technology has brought to the forefront, many technologically advanced and financially strong companies started by the younger generation. With the advent of this explosion, it would be very useful to have an interactive online or virtual community of the famous or well-known people which would allow other members of the community to learn from the experiences of the famous people, and to be able to interact with them for educational purposes or to satisfy their own curiosity. The system would further allow the famous people, as part of the virtual community, to update, modify or revise their biographical information in a "real time" manner, as needed.

OBJECTS AND SUMMARY OF THE INVENTION

The principal object of the present invention is to provide a method and system for creating an interactive virtual or online community of famous people.

An object of the present invention is to provide a method and system for creating an interactive virtual community of people who have attained a recognizable or well-known status in a community.

Yet another object of the present invention is to provide a method and system for creating an interactive virtual community of people from one or more fields of endeavors, such as arts, accounting, animal rights, business, education, engineering, entertainment, finance, government affairs, human rights, legal, medical, philanthropy, politics, religion, research, science, sports, etc.

Still yet another object of the present invention is to provide a method and system for creating a virtual community of selected members from a community which allows the members to interact with each other and with the non-members of the virtual community.

An additional object of the present invention is to provide a method and system for creating a virtual community of selected members from a community by creating individual biographical profiles of the selected members in a field of endeavor and making it available on the Internet.

Yet an additional object of the present invention is to provide a method and system for creating a virtual community of selected members from a community wherein the members have the capability of updating, revising or modifying their profile on as needed basis.

A further object of the present invention is to provide a method and system for creating an interactive virtual community of selected members from a community who wish to attain a selected status in a field of endeavor, such as arts, accounting, animal rights, business, education, engineering, entertainment, financing, government affairs, human rights, legal, medical, philanthropy, politics, religion, research, science, sports, etc.

A further object of the present invention is to provide a method and system for creating an interactive virtual profile of a person in a selected field of endeavor, such as arts, accounting, animal rights, business, education, engineering, entertainment, financing, government affairs, human rights,

3

legal, medical, philanthropy, politics, religion, research, science, sports, etc.

Yet a further object of the present invention is to provide a method and system for creating an interactive profile of a person wherein the person can modify, revise or update his or her profile on as needed basis and from a remote location.

Still yet a further object of the present invention is to provide a method and system for creating an interactive virtual profile of a person wherein the person can interact with another person from the overall community.

Still yet a further object of the present invention is to provide a method and system for creating an interactive virtual profile of a person which allows the person to interact with another person whose profile is also online.

In summary, the main object of the present invention is to provide a method and system for creating an interactive virtual community of famous people, or those people who wish to attain the status of a famous person, in a field of endeavor, such as arts, accounting, animal rights, business, education, engineering, entertainment, financing, government affairs, human rights, legal, medical, philanthropy, politics, religion, research, science, sports, etc. The virtual community of the present invention is unique in that the members of the virtual community can update, modify or revise their individual profile, and interact with other members of the virtual community, as well as the non-members of the virtual community.

BRIEF DESCRIPTION OF THE DRAWINGS

The above and other objects, novel features and advantages of the present invention will become apparent from the following detailed description of the invention illustrated in the drawings, in which:

FIGS. 1-2 are a flow chart illustrating the method of the present invention;

FIG. 3 is a schematic block diagram illustrating arrangement of various virtual communities in different fields of endeavor; and

FIG. 4 is a schematic illustration of an on-line profile of a person.

DETAILED DESCRIPTION OF THE INVENTION

Referring to FIG. 1, the method of the present invention is carried out by first identifying various fields of endeavor (10), such as arts, accounting, animal rights, business, education, engineering, entertainment, financing, government affairs, human rights, legal, medical, philanthropy, politics, religion, research, science, sports, etc. Once a particular field of endeavor has been selected (12), a list of people who are famous, well known, or have achieved a recognizable status in their field of endeavor is compiled (14). A similar list of those people who wish to become famous or attain a certain recognizable status in the field of endeavor may be compiled.

Although various factors may be used to identify people who are famous (or wish to be famous), some of the criteria may include, number of years of experience in the chosen field of endeavor, nature of and number of prizes, private and/or governmental grant(s), financial networth, gross revenue of their business, official publications, general fame in the field of endeavor in particular, and name recognition in the society in general. The foregoing list of criteria for selecting people in a field of endeavor is provided as a general guide and various other factors or criteria may be

4

used so long as people who have attained a certain, known status in the field are selected. The factors may be those recommended by other members in the same field, and/or those recommended by the members of the society in general. Once the list is completed, one or more members are selected (16) and then contacted to obtain their biographical information (18).

Although the type of information collected from the selected members would vary depending on the field of endeavor and the extent of profile desired, it would be useful to at least obtain the information relating to the selected member's experiences prior to and after attaining a certain known-status. In particular, the member's biographical profile will be created by the selected member's responses to the questions directed to the type of subject matter shown below in Tables 1-3.

TABLE 1

PERSONAL INFORMATION	
	Name
	Address
	Age
	Place of Birth
	Level of Education
	Schools Attended
	Overall Health
	Family Information
	Miscellaneous

TABLE 2

UNIQUE PERSONAL ATTRIBUTES	
a) Moments-	i) happiest, saddest, toughest, coolest, worst, best, weakest, successful, unsuccessful, embarrassing, and funniest;
b) Goal(s)-	i) past, present, or future;
	ii) personal or professional;
c) Outlook for life-	i) past, present, or future;
	ii) personal or professional;
d) Definition of Success-	i) past, present, or future;
	ii) personal or professional;
e) Dreams-	i) past, present, or future;
	ii) personal or professional;
f) Choices of food, items of personal possession, or places of vacation-	i) past, present, or future;
g) Interests-	i) past, present, or future;
	ii) personal or professional;
h) Social activities-	i) past, present, or future;
	ii) personal or professional;
i) Charitable activities-	i) past, present, or future;
	ii) personal or professional;
j) Outlook for future, society, humanity, politics, government, religion, elderly, children, peers, animals, outer space, ocean, environment, or the selected field of endeavor.	

US 6,408,309 B1

5

TABLE 3

FIELD OF ENDEAVOR INFORMATION
Field
Position
Status
Years in Field
Awards/Prizes
Publications
Private/Government Grant(s)
Gross Receipts
Net Worth

By processing the information from the selected member (20) and using an appropriate software, a profile of the member would then be created, in an illustration shown in FIG. 4. The profile would be made available in a machine readable media, such as diskette, compact-disk, etc., or stored in a personal computer of the member, or stored in a central remote location for access by the profiled member, other members of the virtual community, and the public general. For example, the profile so created may be made accessible via the Internet.

As shown in FIG. 2, by profiling several members in a field of endeavor (22), a virtual community of the famous people, or those people who wish to attain a certain status, may then be created (24). The underlying software or system would permit the members of the virtual community to interact with each other, as well as the members of the general public (26). The system would further have the capability to allow the members of the virtual community to periodically (or as desired) update, revise or modify their biographical information as they have new experiences, or if, for example, a significantly new type of information becomes relevant to their experiences (26). This would be particularly true of a member of a virtual community who wishes to attain a certain recognizable status in the society. For instance, a member upon receiving an award for contribution to his or her services in the chosen field of endeavor may wish to update his or her biographical profile and any associated experiences therewith, so that other members of the virtual community, as well as non-members of the community, may quickly gain access to the new information.

FIG. 3 illustrates a preferable arrangement of various virtual communities 30 in different fields, that together form a virtual world 32 of well-known people. In particular, a major group 34 of virtual communities in fields, such as art 36, business 38, politics 40, education 42, entertainment 44, sports 46 and religion 48, would be created. The communities in major group 34 would be divided into minor groups, which in turn would further be divided into major sub-groups, minor sub-groups, categories, and sub-categories.

By way of an example, the virtual community of major business group 38 is divided into minor groups of manufacturing 50 and services 52. The minor group of services 52 is further divided into major sub-groups of professionals and consultants 56. The professional sub-group 54 is branched out into minor sub-groups 58, 60 and 62, comprised of medical, legal, and accounting professionals, respectively. The medical sub-group 58 is further divided into categories of physicians 64, surgeons 66, and researchers 68. Likewise, the major sub-group 56 of consultants is divided into minor sub-groups, including computers 70. The minor sub-group 70 of computer persons is further divided into software 72 and hardware 74 categories. The hardware category 74 finally may lead to a community 76 including biographical profiles of well-known people in the software industry, such as Bill Gates. (It is noted herewith that the foregoing is only an illustrative arrangement and various other alternatives

6

thereof may be created, as desired, without departing from the spirit and scope of the invention.)

As can be readily seen, a virtual community of various people in different fields of endeavor created, as noted above, can be extremely useful for those who wish to attain a certain recognizable status in the society. In addition, children wishing to follow the steps of a certain member of the virtual community can easily learn the life experiences of that member and interact with the person to follow his or her goals and objectives in life. This type of virtual community would also be greatly beneficial to the members within the virtual community, as they would be able to interact with each other to educate each other and to learn from the other person's experiences.

While this invention has been described as having preferred ranges, steps, materials, or designs, it is understood that it is capable of further modifications, uses and/or adaptations of the invention following in general the principle of the invention, and including such departures from the present disclosure, as those come within the known or customary practice in the art to which the invention pertains and as may be applied to the central features hereinbefore set forth, and fall within the scope of the invention and of the appended claims. It is further understood that the present invention is not limited to the claims appended hereto.

What is claimed is:

1. A method of creating an interactive virtual community of people in a field of endeavor, comprising the steps of:

- selecting a field of endeavor;
- compiling a list of members in the selected field;
- selecting a member from the compiled list of members based on a preselected factor;
- obtaining biographical information about the selected member;
- processing the biographical information in a preselected format to create a personal profile of the selected member;
- publishing the profile of the selected member on a machine readable media; and
- allowing the selected member to interact with the profile.

2. The method of claim 1, wherein:

the step (f) comprises publishing the profile of the selected member on a network of computers.

3. The method of claim 2, wherein:

the step (f) comprises publishing the profile of the selected member on a global computer information network.

4. The method of claim 3, wherein:

the step (g) comprises allowing the selected member to interact with the profile from a remote location to modify, revise, or update the profile.

5. The method of claim 1, wherein:

the step (c) comprises selecting a plurality of members from the compiled list of people based on one or more preselected factors.

6. The method of claim 5, wherein:

the step (e) comprises creating an individual personal profile of each of the selected members.

7. The method of claim 6, further comprising the step of: h) creating a virtual community of people by publishing the profiles of the selected members.

8. The method of claim 7, further comprising the step of:

i) allowing the members of the virtual community to interact with their respective profiles from a remote location.

US 6,408,309 B1

7

- 9. The method of claim 7, further comprising the step of:
 - i) allowing the members of the virtual community to interact with each other from a remote location.
- 10. The method of claim 7, further comprising the step of:
 - i) allowing the members of the virtual community to interact with non-members of the virtual community.
- 11. The method of claim 8, further comprising the step of:
 - j) allowing the members of the virtual community to interact with their respective profiles to make modifications, or revisions, or updates thereto.
- 12. The method of claim 4, wherein:
 - the step (a) comprises selecting a field of endeavor from the group consisting of arts, accounting, animal rights, business, education, engineering, entertainment, finance, government affairs, human rights, legal, medical, philanthropy, politics, religion, research, science, and sports.
- 13. The method of claim 12, wherein:
 - the preselected factor is unique to the selected field of endeavor.
- 14. The method of claim 13, wherein:
 - the step (c) comprises selecting a member based on a factor selected from the group consisting of financial net worth, gross revenue, number of years in the field of endeavor, number of awards or prizes received, size of private or governmental grant(s), fame, and number of publications.
- 15. The method of claim 14, wherein:
 - the step (d) comprises obtaining biographical information by inquiring the selected member about one or more of the following:
 - a) Moments
 - i) happiest, saddest, toughest, coolest, worst, best, weakest, successful, unsuccessful, embarrassing, and funniest;
 - b) Goal
 - i) past, present, or future;
 - ii) personal or professional;
 - c) Outlook for life
 - i) past, present, or future;
 - ii) personal or professional;
 - d) Definition of Success
 - i) past, present, or future;
 - ii) personal or professional;
 - e) Dreams
 - i) past, present, or future;
 - ii) personal or professional;
 - f) Choices of food, items of personal possession, or places of vacation
 - i) past, present, or future;
 - g) Interests
 - i) past, present, or future;
 - ii) personal or professional;
 - h) Social activities
 - i) past, present, or future;
 - ii) personal or professional;
 - i) Charitable activities
 - i) past, present, or future;
 - ii) personal or professional;
 - j) Outlook for future, society, humanity, politics, government, religion, elderly, children, peers, animals, outer space, ocean, environment, or the selected field of endeavor.
- 16. A method of creating an interactive virtual community of people with shared interests in a field of endeavor, comprising the steps of:
 - a) selecting a field of endeavor from the group consisting of accounting, arts, business, politics, education,

8

- engineering, entertainment, medical, legal, philanthropy, science, sports, religion, and government affairs;
- b) compiling a list of members in the selected field;
- c) selecting a plurality of members from the compiled list based on a preselected factor;
- d) obtaining biographical information about the selected members;
- e) processing the biographical information in a preselected format to create a personal profile of each of the selected members;
- f) publishing the profiles of the selected members on a global network of computers to form a virtual community; and
- g) allowing the selected members to revise, modify or update their respective profile from a remote location.
- 17. The method of claim 16, further comprising the step of:
 - h) allowing the selected members to interact with each other and with non-members of the virtual community.
- 18. The method of claim 17, wherein:
 - the preselected factor is unique to the selected field of endeavor and is selected from the group consisting of financial net worth, gross revenue, number of years in the field of endeavor, number of awards or prizes received, size of private or governmental grant(s), fame in the community, and number of publications.
- 19. A method of creating an interactive profile of a person in a field of endeavor, comprising the steps of:
 - a) selecting a field of endeavor;
 - b) compiling a list of members in the selected field;
 - c) selecting a member from the compiled list based on one or more factors identified by other members in the selected field of endeavor;
 - d) obtaining biographical information about the selected member;
 - e) processing the biographical information in a preselected format to create a personal profile of the selected member;
 - f) publishing the profile of the selected member on a global network of computers; and
 - g) allowing the selected member to interact with the profile to revise, modify or update the profile from a remote location.
- 20. A method of creating an interactive profile of a person in a field of endeavor, comprising the steps of:
 - a) selecting a field of endeavor;
 - b) compiling a list of members in the selected field;
 - c) selecting a member from the compiled list based on one or more factors identified by members not in the selected field of endeavor;
 - d) obtaining biographical information about the selected member;
 - e) processing the biographical information in a preselected format to create a personal profile of the selected member;
 - f) publishing the profile of the selected member on a global network of computers; and
 - g) allowing the selected member to interact with the profile to revise, modify or update the profile from a remote location.

30(B) (6) DEPOSITION OF DINESH AGARWAL - JULY 27, 2011

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

VS TECHNOLOGIES, LLC	)	Civil Action No.
	)	2:11-cv-00043-HCM/FBS
Plaintiff,)	
	)	VOLUME I
VS.	)	Pages 1 thru 237
)	
TWITTER, INC.	)	(Pages 131, 139-142
	)	& 189-211 and Exhibits
Defendant.	)	1030-1032 & 1034-1037
	)	are marked "Confidential"
)	and bound separately)

VIDEOTAPED 30(B) (6) DEPOSITION OF
DINESH AGARWAL
July 27, 2011

Reported By:

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Reporter, Registered Merit Reporter,
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23
24
25

INDEX

	PAGE
Examination by Mr. Silbert.....	6
Examination by Mr. Vowell.....	220
Examination by Mr. Silbert.....	225
Reporter's Certificate.....	237

EXHIBITS

NO.	DESCRIPTION	PAGE
1000	Notice of Deposition	6
1001	Patent No. 6,408,309 B1	9
1002	1-23-98 University of Virginia Website Printout, Department of Computer Science Faculty	20
1003	Grimshaw Profile	24
1004	Andrew Grimshaw Expert Report	28
1005	Printout from PatentIdea.com Website	84
1006	Declaration and Power of Attorney	109
1007	Notice of References Cited	110
1008	Patent No. 5,956,717	111
1009	Patent No. 5,675,788	114
1010	Patent No. 6,340,978	116
1011	8/9/02 Letter to CBS	148
1012	8/12/02 Email to people.com	149
1013	8/23/02 Letter to NBC	150
1014	9/17/02 Letter to E! Entertainment Television	151
1015	2/29/98 Website Printout from E!Online.com	154
1016	9/17/02 Letter to The Cimarron Group	161
1017	2/10/99 Website Printout from schwarzenegger.com	166
1018	9/17/02 Letter to Viacom	170
1019	7/17/02 Letter to Microsoft	171
1020	10/14/02 Letter from Microsoft	171
1021	9/17/02 Letter to AOL Time Warner	172
1022	AOL Emails	172
1023	2/13/03 Letter to FremantleMedia	173
1024	2/13/03 Letter to The Bachelor/Bachelorette	173
1025	2/13/03 Letter to ABC	173
1026	2/13/03 Letter to Fox Broadcasting	174
1027	2/13/03 Letter to Ticketmaster	174
1028	2/11/03 Letter to Friendster	179
1029	Forbes.com Article	181

30(B)(6) DEPOSITION OF DINESH AGARWAL - JULY 27, 2011

11:55 1 terms of searching for prior art --

11:55 2 A. Well, the -- see, the thing is, I have to
11:55 3 remember that, you have to flash back to 1999, 2000,
11:55 4 patent laws were shifting, I don't remember exactly. And
11:55 5 they were updating the system from manual to -- to
11:56 6 computerized, so I -- I learned a little bit, but did I
11:56 7 keep up with it, when did I drop off, I do not recall.

11:56 8 Q. Was searching for prior art a service that you
11:56 9 personally offered professionally to clients in or around
11:56 10 2000?

11:56 11 A. Yes.

11:56 12 Q. Okay. Would you please describe for me the
11:56 13 prior art searching that you did before applying for the
11:56 14 '309 patent. And by "you," I don't mean you personally;
11:56 15 I mean anyone that -- you personally or anyone working
11:56 16 with you or for you did.

11:56 17 A. I did not do a formal patent search. I looked
11:56 18 up on the Internet in the 1999, 2000 time frame.

11:56 19 Q. So you didn't follow the advice that you give to
11:56 20 your clients on your website with respect to the '309
11:57 21 patent?

11:57 22 A. I did not follow that advice because of the
11:57 23 technology. If someone had come to me or if you,
11:57 24 Mr. Gil- -- Mr. Silbert, had come to me with a bike and
11:57 25 bell, or if I had invented that, I certainly would have

91

11:57 1 done a patent search. But at the time I believed this to
11:57 2 be very new technology, so I did not do a patent search,
11:57 3 excuse me, I'm sorry, the -- yeah, the formal patent
11:57 4 search.

11:57 5 Q. Isn't the point of a prior art search or a point
11:57 6 of a prior art search to find out whether or not
11:57 7 something actually is new technology?

11:57 8 A. That, not necessarily, because, as an attorney,
11:57 9 you are aware, especially someone, I mean, you do
11:58 10 searches, what technology is coming up. Attorneys
11:58 11 sometimes make a judgment call, saying, You don't need to
11:58 12 check before 1950, for instance.

11:58 13 Q. Okay. Who besides yourself personally conducted
11:58 14 any prior art searching related to the invention claimed
11:58 15 in the '309 patent --

11:58 16 A. No one.

11:58 17 Q. -- before -- before the patent was issued?

11:58 18 A. I'm sorry.

11:58 19 Q. Yeah.

11:58 20 A. No one.

11:58 21 Q. Okay. Why did you not ask any of the
11:58 22 professionals that you worked with to conduct any prior
11:58 23 art searching?

11:58 24 A. Well, as I said earlier, I made a judgment call,
11:58 25 and also the, from what I recall, 1999, 2000 time frame,

11:58 1 the Patent Office was not issuing a lot of system-related
11:59 2 patents. There was -- they were really reluctant to
11:59 3 issue those kinds of patents. This is what I recall.

11:59 4 Q. Did --

11:59 5 A. So --

11:59 6 Q. Did you say the Patent Office was not issuing a
11:59 7 lot of system-related patents?

11:59 8 A. Computers, that's what I meant, computers.

11:59 9 Q. Was the, as far as you understand in 199 or --
11:59 10 1999 or 2000, was the Patent Office issuing a lot of
11:59 11 business method patents?

11:59 12 A. I -- eleven and a half years ago, I don't
11:59 13 believe -- I believe State Street case, which allowed to
11:59 14 file method of doing business patents, really close to
11:59 15 the time, and I -- and please don't hold me to it because
11:59 16 I don't know when the case came out, but I recall it was
11:59 17 fairly recent time frame. So that was another reason.

12:00 18 Q. And your patent, the '309 patent, is a business
12:00 19 method patent, right?

12:00 20 A. What I would classi- --

12:00 21 MR. VOWELL: Object to form.

12:00 22 THE WITNESS: Sorry.

12:00 23 MR. VOWELL: Go ahead.

12:00 24 THE WITNESS: What I would classify my patent is
12:00 25 a business method and a system of a computer-related

12:04 1 Q. All right. You said you did at least some
12:04 2 searching; is that right?

12:04 3 A. Yes.

12:04 4 Q. You lo- -- said you looked on the Internet?

12:04 5 A. Yes, sir.

12:04 6 Q. How long did you spend searching on the
12:04 7 Internet?

12:04 8 A. I do not recall, to be very honest with you. It
12:04 9 was over eleven and a half years ago, and I probably did
12:04 10 the search a couple months before the application was
12:04 11 filed.

12:04 12 Q. Was it more than an hour?

12:04 13 A. I do not recall. I just do not recall.

12:04 14 Q. Can you provide any estimate whatsoever?

12:04 15 A. I -- I just -- honestly, I don't recall. I did
12:04 16 the search. That's it.

12:04 17 Q. Was it -- did you spend more than 15 minutes?

12:04 18 A. Again, I don't recall the number.

12:04 19 Q. More than five minutes? You don't know?

12:04 20 A. I don't recall --

12:05 21 Q. What --

12:05 22 A. -- how much I spent, how much time I spent doing
12:05 23 the Internet search.

12:05 24 Q. What specifically did you do when you did the
12:05 25 Internet search?

30 (B) (6) DEPOSITION OF DINESH AGARWAL - JULY 27, 2011

04:31 1 contained in here was generated?

04:31 2 **A. Other than the dates that are there, that's it.**

04:31 3 Q. Underneath Mr. Grimshaw's name, there --

04:31 4 there's -- appears to be some information related to

04:31 5 Mr. Grimshaw. Do you see that?

04:31 6 **A. Yes.**

04:31 7 Q. And I believe we discussed earlier that there

04:31 8 was an email address shown below. Do you see that?

04:31 9 **A. Yes, I do.**

04:31 10 Q. Do you know whether that email address -- well,

04:31 11 first of all, do you know whether that email address

04:31 12 relates to Mr. Grimshaw?

04:31 13 **A. I personally don't know. It just says**

04:31 14 **"grimshaw@" whatever.**

04:31 15 Q. And do you -- do you have any -- do you have any

04:31 16 information to indicate whether or not someone could

04:32 17 click on Mr. Grimshaw's email address?

04:32 18 **A. I don't have any information.**

04:32 19 Q. Okay. So you don't -- you don't know one way or

04:32 20 the other whether -- whether you could click on this

04:32 21 email address to -- to email Mr. Grimshaw?

04:32 22 **A. No, I don't.**

04:32 23 Q. Do you have any information to -- to know

04:32 24 whether thi- -- this information was actually available

04:32 25 on the Internet --

223

04:32 1 **A. No, I don't have any information.**

04:32 2 Q. -- at that time?

04:32 3 And I -- I think there was a discussion about --
04:32 4 in reference to Exhibit 1003, about interaction between
04:32 5 members of a virtual community. And I just wanted to --
04:32 6 to ask you a few questions about that.

04:32 7 Is there anything that indicates to you here
04:32 8 that there's any interaction between members of a virtual
04:32 9 community in realtime?

04:32 10 **A. I don't think so.**

04:33 11 Q. And would you need to actually go on the system
04:33 12 and see how it worked in order to determine whether or
04:33 13 not there was any interaction in realtime --

04:33 14 **A. Yes.**

04:33 15 Q. -- between members?

04:33 16 And I -- I notice that this indicates that there
04:33 17 is an office, and I -- it may be Mr. Grimshaw's office,
04:33 18 at 236c Olsson Hall. Do you see that?

04:33 19 **A. Where is that?**

04:33 20 Q. On the fir- -- let's see, on the first
04:33 21 page and --

04:33 22 **A. Oh, yes, Office, yes.**

04:33 23 Q. -- next --

04:33 24 And if Mr. Grimshaw were in his office and a
04:33 25 student visited his office and they talked in person,

04:33 1 would you consider that an interaction within the virtual
04:33 2 community?

04:33 3 **A. I wouldn't consider that, no.**

04:33 4 Q. All right. So the interaction discussed in
04:33 5 Claim 9 between members should be within the virtual
04:33 6 community; is that right?

04:33 7 **A. Yes.**

04:33 8 Q. If you'll get out Exhibit 1002.

04:34 9 And with respect to Exhibit 1002, do you have
04:34 10 any information as to how this exhibit was created?

04:34 11 **A. No, I do not.**

04:34 12 Q. Do you know whether this accurately represents
04:34 13 any information that was ever available on the University
04:34 14 of Virginia's university website?

04:34 15 **A. No, I don't.**

04:34 16 Q. And in order to determine how this information
04:34 17 appeared and -- and whether it represented a community or
04:34 18 a virtual community, you would need to actually access
04:34 19 the site, look at it, and determine that information for
04:34 20 yourself; is that correct?

04:34 21 **A. That's correct.**

04:34 22 MR. SILBERT: Object to the form.

04:35 23 MR. VOWELL: Okay. I have no further questions.

04:35 24 MR. SILBERT: Just a little bit of follow-up.

04:35 25 EXAMINATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Norfolk Division)**

VS TECHNOLOGIES, LLC,)	
)	
Plaintiff)	
	)	CIVIL CASE NO: <u>2:11cv43 (HCM)(FBS)</u>
vs.)	
)	
TWITTER, INC.)	
)	
Defendant.)	

**PLAINTIFF VS TECHNOLOGIES, LLC’s RESPONSES TO DEFENDANT
TWITTER INC.’S FIRST SET OF INTERROGATORIES (1-11)**

Subject to the VS Technologies, LLC’s Objections to Twitter Inc.’s First Set of Interrogatories (1-11) served on April 15, 2011, Plaintiff VS Technologies, LLC (“Plaintiff” or “VS Technologies”) responds to Defendant Twitter Inc.’s (“Defendant’s” or “Twitter’s”) First Set of Interrogatories as follows:

INTERROGATORY NO. 1:

Please identify all bases for your contention that Twitter satisfies all limitations of any claim of the ‘309 Patent.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.’s First Set of Interrogatories, which was served on Defendant on April 15, 2011. Subject to those general and specific objections, Plaintiff answers as follows: Plaintiff’s bases for its contention that Twitter satisfies all limitations of any claim of the ‘309 Patent and in particular how Twitter practices such limitations is set forth in Plaintiff’s Patent Disclosures and the claim charts attached thereto. Plaintiff reserves the right to supplement and/or amend this Response after receipt and review of documents and answers responsive to Plaintiff’s discovery requests served on Twitter.

INTERROGATORY NO. 2:

If you contend that Twitter is liable for indirect infringement of the '309 patent, please explain all bases for that contention, including (without limitation) the identity of and the allegedly infringing acts of the alleged direct infringers, the actions taken by Twitter to induce or contribute to that infringement, and the basis for your claim that Twitter had knowledge of the allegedly infringed patent.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was served on Defendant on April 15, 2011. Subject to those general and specific objections, Plaintiff answers as follows: Plaintiff does not currently contend that Twitter is liable for indirect infringement of the '309 Patent, but this case is still in its infancy and discovery is ongoing. Plaintiff reserves the right to supplement and/or amend this Response after receipt and review of documents and answers responsive to Plaintiff's discovery requests served on Twitter.

INTERROGATORY NO. 3:

If you contend that any entity other than Twitter is practicing or has practiced any claim of the '309 patent, please identify all bases for your contention.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was served on Defendant on April 15, 2011. Subject to those general and specific objections, Plaintiff answers as follows: Plaintiff does not currently contend that any entity known to be legally related to Twitter other than Defendant is practicing or has practiced any claim of the '309 Patent. Entities legally unrelated or not currently known to be related to Twitter may be practicing or have practiced claims of the '309 Patent, but such use of the invention is unrelated to any of Plaintiff's current claims of infringement against Twitter in this lawsuit and any such disclosure at this time is protected by the attorney-client and/or work product privileges.

Plaintiff reserves the right to supplement and/or amend this Response after receipt and review of documents and answers responsive to Plaintiff's discovery requests served on Twitter.

INTERROGATORY NO. 4:

If you contend that any step of the method claimed in any of the claims in the '309 patent is tied to a particular machine or apparatus, or that it transforms a particular article into a different state or thing, please set forth each such step of the claimed method and the machine, apparatus, or transformation that it involves.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was served on Defendant on April 15, 2011. Subject to those general and specific objections, Plaintiff answers as follows: Plaintiff's contention that Twitter satisfies all limitations of any claim of the '309 Patent, and in particular how Twitter practices such limitations, is set forth in Plaintiff's Patent Disclosures and the claim charts attached thereto. Plaintiff reserves the right to supplement and/or amend this Response after receipt and review of documents and answers responsive to Plaintiff's discovery requests served on Twitter.

INTERROGATORY NO. 5:

If you contend that you have been damaged by Twitter's alleged infringement of the '309 patent, please explain all bases for your contention, including (without limitation) identifying the amount of the alleged damages and the means by which you have calculated the alleged damages.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was served on Defendant on April 15, 2011. Subject to those general and specific objections, Plaintiff answers as follows: Plaintiff's explanation of the types of damages it intends to seek is set forth in Plaintiff's FRCP 26(a) Initial Disclosures. As Plaintiff has not yet received any

answers or document production from Twitter, specifically any financial information requested in Plaintiff's First Set of Requests for Production and Plaintiff's First Set of Interrogatories, and expert reports (including those on damages) are not yet due, Plaintiff cannot at this time provide a more detailed calculation of a reasonable royalty. Plaintiff reserves the right to supplement and/or amend this Response after receipt and review of documents and answers responsive to Plaintiff's discovery requests served on Twitter.

INTERROGATORY NO. 6:

If you contend that any secondary considerations of non-obviousness support the alleged validity of the '309 patent, please identify all bases for that contention.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was served on Defendant on April 15, 2011. Subject to those general and specific objections, Plaintiff answers as follows: The '309 Patent is presumed valid and Plaintiff has not yet been made aware of any obviousness allegations by Twitter and at this early stage of the case discovery is ongoing. Current secondary considerations of non-obviousness include Twitter's copying of and commercial success with the invention. As this case progresses, facts are developed in discovery, documents are produced by Twitter responsive to Plaintiff's First Set of Requests for Production, and expert reports come due, Plaintiff reserves the right to supplement and/or amend this Response.

INTERROGATORY NO. 7:

Please identify all persons with whom Dinesh Agarwal (or anyone acting on his behalf) has communicated (orally, in writing, or by any other means) regarding the '309 patent.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was served on Defendant on April 15, 2011. Subject to those general and specific objections,

Plaintiff answers as follows: Mr. Agarwal has communicated with potential counsel and the current counsel of record in regards to the '309 Patent, but the subject of such communications are privileged. Mr. Agarwal has also communicated with Acacia Research Group, RPX Corporation, and Intellectual Ventures about the '309 Patent. Mr. Agarwal also sent letters to various companies inviting a discussion about a potential business relationship, but most of these letters went unanswered. These companies include the following: Friendster, Inc., Freemantle Media North America, Ticketmaster, Inc., Match.com, The Bachelor/Bachelorette, ABC, Inc., Fox Broadcasting Co., AOL Time Warner, CBS, Inc., People Magazine, Microsoft, Inc., Viacom, Inc., The Cimarron Group, E! Entertainment Online, and NBC, Inc. Additionally, Mr. Agarwal himself was solicited by a handful of entities concerning a potential business arrangement related to the '309 Patent but Mr. Agarwal did not respond to said solicitations. Additionally, Mr. Agarwal has had conversations in passing with various friends and family members about the '309 Patent, but such discussions are unrelated to Twitter or any claims of Plaintiff against Twitter in this lawsuit. Plaintiff reserves the right to supplement and/or amend this Response

INTERROGATORY NO. 8:

Please identify all compilations of selected individuals' biographical information that Dinesh Agarwal was aware of on or before June 18, 2002.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was served on Defendant on April 15, 2011. In addition to those general and specific objections, specifically Plaintiff's objection that this interrogatory is overly broad and unduly burdensome in that it fails to state the information sought with reasonable particularity, Plaintiff additionally

objects to this interrogatory in so far as it is not narrowly tailored to sufficiently describe the information sought, nor is it likely to lead to the discovery of admissible information. Insofar as Twitter is seeking Mr. Agarwal's pre-June 18, 2002 knowledge of any compilations of selected individuals' biographical information as contemplated by the invention set forth in the '309 Patent, Mr. Agarwal is not aware of any such compilations. Plaintiff reserves the right to supplement and/or amend this Response in the event Twitter can more narrowly define the type of information sought by this Interrogatory.

INTERROGATORY NO. 9:

Please describe the characteristics of what you contend to be a person of ordinary skill in the art with respect to the '309 patent.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was served on Defendant on April 15, 2011. Subject to those general and specific objections, Plaintiff answers as follows: A person of ordinary skill in the art would be a person with at least 4 years of education in computers or websites or with a degree in computer science and/or at least 2 years of experience in developing websites and/or web content. Plaintiff reserves the right to supplement and/or amend this Response after receipt and review of documents and answers responsive to Plaintiff's discovery requests served on Twitter.

INTERROGATORY NO. 10:

If you contend that this case is exceptional under 35 U.S.C. § 285, please explain all bases for your contention.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was

served on Defendant on April 15, 2011. Subject to those general and specific objections, Plaintiff answers as follows: Plaintiff does not currently contend that this is an exceptional case, but this case is still in its infancy and discovery is ongoing. Plaintiff reserves the right to supplement and/or amend this Response after receipt and review of documents and answers responsive to Plaintiff's discovery requests served on Twitter.

INTERROGATORY NO. 11:

Please identify all publications, inventions, public uses, activities, items sold, patents, patent applications, or any other thing that you have identified, or that any other person has asserted to be, prior art to the '309 patent.

RESPONSE: Plaintiff hereby incorporates its general and specific objections to this Interrogatory as set forth in its Objections to Twitter Inc.'s First Set of Interrogatories, which was served on Defendant on April 15, 2011. Subject to those general and specific objections, Plaintiff answers as follows: Any prior art that Plaintiff was aware of during the prosecution of the '309 Patent were disclosed and are referenced in the file history to the '309 Patent which is being produced with Plaintiff's first document production. Since the issuance of the patent, Plaintiff has become aware of the following pieces of art: U.S. Patent No. 6,175,831, U.S. Patent No. 7,739,139, U.S. Patent No. 6,269,369, U.S. Patent No. 6,272,467, U.S. Patent No. 5,950,200, and U.S. Patent No. 6,519,629. Plaintiff does not consider these patents, alone or in combination, to be relevant to any of the inventions set forth in the '309 Patent. Plaintiff reserves the right to supplement and/or amend this Response after receipt and review of documents and answers responsive to Plaintiff's discovery requests served on Twitter.

Dated: May 2, 2011

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Plaintiff VS Technologies LLC's Responses to Defendant Twitter's First Set of Interrogatories** was served on all counsel of record via electronic mail on this 2nd day of May, 2011:

VIA ELECTRONIC MAIL

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ATTORNEYS FOR PLAINTIFF

Declaration of Corby
Vowell – Exhibit D
Filed Under Seal

**Declaration of Corby
Vowell – Exhibit E
Filed Under Seal**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Norfolk Division)**

VS TECHNOLOGIES, LLC,)	
)	
Plaintiff)	
	)	CIVIL CASE NO: <u>2:11cv43 (HCM)(FBS)</u>
vs.)	
)	
TWITTER, INC.)	
)	
Defendant.)	

**DECLARATION OF DR. MARK JOSEPH IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO TWITTER'S MOTION FOR SUMMARY JUDGMENT**

I, Dr. Mark Joseph, declare as follows:

1. My name is Mark Joseph. I am over 18 years of age and competent to testify to the facts stated herein. I have personal knowledge of the facts stated herein, and they are true and correct. I have been engaged as a technical expert to present opinions on behalf of VS Technologies, LLC in its patent dispute with Twitter, Inc.

2. Attached as Exhibit A to this declaration is a true and correct copy of my expert report on infringement dated July 18, 2011, which I incorporate herein by reference. My qualifications are set forth in Section I(B) on pages 1-2 of the report, and my CV is attached as Exhibit A to the report.

3. Attached as Exhibit B to this declaration is a true and correct copy of my rebuttal to Twitter's expert's report on invalidity dated August 22, 2011, which I incorporate herein by reference.

4. Attached as Exhibit C to this declaration is a true and correct copy of my reply report on infringement dated September 2, 2011, which I incorporate herein by reference.

5. The Asserted Claims of the '309 patent are directed to an online, virtual community and are thus tied to a particular network of computers, i.e., the Internet. The claimed method transforms raw biographical information into online interactive profiles that comprise a virtual community on the Internet.

6. The Asserted Claims are not directed to an abstract idea and cannot be performed entirely in the human mind. At a minimum, elements (e), (f), and (g) of Claim 1 must be performed in the physical world, i.e., by a computer.

7. The Who's Who service referenced by Twitter in its Motion does not anticipate or render obvious any of the asserted claims. In forming my opinion, I have considered the scope and content of the prior art, the distinctions between the Asserted Claims and the prior art, as well as the level of ordinary skill in the art. I set forth the basis for my conclusion in detail in my rebuttal report at pages 5-10 and 38-40. (Exhibit B).

8. Who's Who was not a virtual community, but rather a static directory similar to a telephone book or yellowpages. Who's Who did not have interactive profiles that acted as virtual representations of people in an online community. I explain this in my rebuttal report at pages 5-10. (Exhibit B).

9. Who's Who did not allow a user to update their biographical information in the manner specified by the claims. The Asserted Claims require that members in the virtual community have the capability to update their profile in real time. Who's Who did not allow an individual to update their biographical information in real time. Any updates to directory entries were made by the Who's Who staff after submission by an individual. I address this distinction in more detail on pages 8-10 of my rebuttal report (Exhibit B).

10. Who's Who did not allow members to interact with one another within a virtual community. Twitter refers to the listing of an email address on an individual's directory entry which is similar to listing a phone number or address in a telephone book. Listing an external email address does not provide an individual with the capability to interact within a virtual community. I explain this in more detail in my rebuttal report at pages 8-10. (Exhibit B).

11. As one of skill in the art of the '309 Patent, it is my opinion that none of the art relied upon by Twitter in its Motion for Summary Judgment renders the Patent invalid as either being anticipated or rendered obvious. The bases for my opinions are addressed in my reports referenced above.

12. The '309 patent provides an enabling disclosure to one of ordinary skill in the art. As one of skill in the art, I can practice the invention of the '309 patent. From the disclosure in the specification, I am able to design and implement a virtual community on the Internet that provides the features set forth in the Asserted Claims without undue experimentation. My analysis is set forth on pages 40-41 of my rebuttal report. (Exhibit B).

13. I provide an overview of the Twitter service at pages 8-12 of my infringement report. (Exhibit A). Twitter obtains biographical information about users when they initially set up their account. Twitter stores user's biographical information in a database. When a request is made to view a user's profile, Twitter obtains the user's biographical information from its database to create and display the profile. (See Exhibit A, pages18-19 and Exhibit C, pages2-5).

14. Twitter creates a profile for each user by generating an HTML page that includes a portion of the user's biographical information. A profile is created after a user sets up their Twitter account. When someone wants to view a user's profile, Twitter obtains the biographical

information from the database and generates a profile to display over the Internet. (See Exhibit A, pp. 19-21 and Exhibit C, pp. 5-7).

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

Executed this 19th day of September, 2011, in Santa Cruz, California.



Dr. Mark Joseph

**Declaration of Mark
Joseph – Exhibit A
Filed Under Seal**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Norfolk Division)**

VS TECHNOLOGIES, LLC,)	
)	
Plaintiff)	
	)	CIVIL CASE NO: <u>2:11cv43 (HCM)(FBS)</u>
vs.)	
)	
TWITTER, INC.)	
)	
Defendant.)	

REBUTTAL REPORT OF DR. MARK JOSEPH

I. INTRODUCTION

A. Engagement

I, Dr. Mark Joseph, have previously rendered my expert opinions and analysis in support of such opinions in this litigation on behalf Plaintiff VS Technologies, LLC. (hereinafter called “VS Tech”) and in accordance with Rule 26 of the Federal Rules of Civil Procedure. I have been asked to respond to the report of Andrew Grimshaw served on July 26, 2011. In this Rebuttal Report, I will explain why Grimshaw’s observations regarding the content and scope of the prior art are incorrect and his conclusions that the asserted claims are either anticipated by or rendered obvious by the cited prior art are flawed.

I have personal knowledge of certain facts stated herein. In other cases, I rely on the source materials described. In preparation of this report, I have reviewed the ‘309 patent, the Grimshaw report including attachments, and documents produced by Twitter in this litigation related to the prior art cited by Grimshaw (TWITTER00004333-4712). I am a citizen of the United States and reside in Santa Cruz, California. I am presently being compensated for my work in this case at a rate of \$200 per hour, plus expenses. My compensation is not based on the

outcome of the litigation. My background and qualifications are set forth in my July 18, 2011 Expert Report. In the past four years I have not testified at a trial as an expert witness or been deposed on behalf of any party.

B. Legal Standards

I have been informed of the following legal principles that are related to the determination of validity of a patent.

1. Anticipation

I understand that a patent claim is invalid under 35 U.S.C. §102 as anticipated if a single prior art reference or thing includes every limitation of a claim, either expressly or inherently. *See Akzo N.V. v. U.S. Int'l Trade Comm'n*, 808 F.2d 1471, 1479 (Fed. Cir. 1986) ("Under 35 U.S.C. § 102, anticipation requires that each and every element of the claimed invention be disclosed in a prior art reference."); *see also Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983); *Transclean Corp. v. Bridgewood Sercs., Inc.*, 290 F.3d 1364, 1373 (Fed. Cir. 2002) (explaining the concept of anticipation by inherent disclosure).

I also understand that patents are presumed valid. 35 U.S.C. § 282. Thus, it is my understanding that Defendant has the burden to prove by clear and convincing evidence that each of the references cited in the Grimshaw report is (i) prior art, and (ii) disclosed every limitation of the asserted claims of the '309 Patent. *Impax Labs., Inc. v. Aventis Pharma., Inc.*, 545 F.3d 1312, 1314 (Fed. Cir. 2008).

2. Obviousness

I have been informed that statute 35 U.S.C. §103 (a) is the statutory provision governing the law regarding "obviousness" issues relating to a patent, as follows:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negative by the manner in which the invention was made.

It is my understanding that commonly used principles for determining obviousness are stated in *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966), including the following statement:

While the ultimate question of patent validity is one of law, *A. & P. Tea Co. V. Supermarket Corp.*, *supra*, at 155, the § 103 condition, which is but one of three conditions, each of which must be satisfied, lends itself to several basic factual inquiries. Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc. might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

I am also aware of the Supreme Court's decision in *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007) and have considered that decision, among others, in reaching conclusions as set forth in this report. It is my understanding that the teaching, suggestion, motivation (TSM) test has often been used to determine if the subject matter claimed in a patent was "obvious" based on a combination of references, by demonstrating that the prior art included teachings, suggestions, and motivation to make such combinations. I have been told to assume that the TSM test should be applied flexibly so as to allow persons of ordinary skill in the art to use common sense in considering what art might be combined with other art for purposes of establishing "obviousness," and that there need be no specific "teaching, suggestion or motivation" to combine in the art. I have also been told to assume that the when the prior art "teaches away" from combining known elements, or when the combination produces a new

function or an unexpected result, a patent claiming the combination is more likely to be determined not to have been “obvious” to a person of ordinary skill in the art at the time the invention was made.

C. Summary of Expected Testimony

If asked to testify at trial or at a hearing before the Court, I expect to describe the contribution of the ‘309 patent as it applies to Web applications, and to illustrate its uniqueness. I also expect to describe the content and scope of the prior art cited by Grimshaw and the bases for my conclusion, as set forth herein, that none of the cited prior art renders any of the asserted claims of the ‘309 patent invalid.

II. OVERVIEW OF THE ‘309 PATENT AND PRIOR ART

The ‘309 patent discloses how to create a virtual online community of members in a particular field of endeavor. The virtual community maintains biographical information about each of the members which is available in the form of a profile in a preselected format. Each member’s profile may contain information such as their name, age, place of birth, occupation, hobbies or life experiences. The profiles are available to be viewed by members of the community on a website over the Internet. The members of the virtual community may interact with their profile to update the information contained therein and provide additional information about their life experiences. The members may also interact with each other through the virtual community to share additional information. In an interactive virtual community, members may learn information about each other and communicate with one another.

In the ‘309 patent, Mr. Agarwal describes that, prior to the time of his invention, information about various people was available in either print form or electronic form, including on the Internet. In order to learn about the life experiences of other people with similar interests

or others who are famous in a particular field, one could look up pre-existing information in a book or on the Internet. In addition, there were mechanisms available to allow people to communicate over the Internet, such as email. However, there were no virtual interactive communities that provided the features taught in the '309 patent.

In particular, the '309 patent described personal profiles of the members of the community are created from biographical information about each member. The profiles are published on a website on the Internet and a mechanism is provided to allow the members to interact with their own profile in real time to update and revise the biographical information contained therein. The '309 patent also provided another important advancement over prior art systems by providing for direct interaction between members of the virtual community. Within the virtual community, members could share additional information, ask questions, or receive updates about another member's life or interests. By providing user profiles that can be updated and revised in real time online and by providing for direct interaction between the members of the community, the '309 patent discloses a truly interactive virtual community that overcame the limitations of the prior art.

The prior art cited by Grimshaw relates to several different categories of printed books, CD's or websites that lacked the key features disclosed in the '309 patent which create an interactive virtual community. Grimshaw refers to various online directories available prior to 2000 that listed people in a specific profession or advertised goods or services in various categories. However, these online directories were no different than prior print versions such as a telephone book or yellow pages. For example, Grimshaw refers to the fashion model directory website which provided a list of fashion models. However, there was no ability for the any of the people in the directory to update or revise their information in the directory in real time.

Grimshaw admits that the fashion model directory database was updated at most every two weeks, and there is no indication in the information provided that a fashion model themselves could actually update their information.

The '309 patent describes the creation of an "interactive virtual community" and with that a member's profile should be able to be changed easily and quickly. This is clear from the '309 patent's description of the old forms of media and how long it takes to update data in that form. For example, see the following passage from Column 1, lines 47 to 52.

The conventional biographical accounts of a person are, however, limited in that the author typically does not return to the same person, either to update the earlier published account, or to present an interactive approach to the more recent life experiences of that person.

The patent specification explicitly states that member's interaction with their profiles must allow the biographical information to be updated in real time.

The system would further allow the famous people, as part of the virtual community, to update, modify or revise their biographical information in a "real time" manner, as needed. (Col. 2, lines 17-20).

Many of the prior art websites referred to by Grimshaw lack this fundamental concept taught in the '309 patent.

In other online directories cited by Grimshaw, such as experts.com, the website provided no way for people to interact with each other within a virtual community. Instead, it merely listed an email address for a separate, external email system where the expert could receive email messages. This is no different from a phone book listing a phone number where a person can be reached via the telephone network, or even the address listing in the phone book at which a person may receive a letter. Links on the website to external email systems are, thus, not a form of interaction within the virtual community between members.

Other prior websites that Grimshaw refers to in his report are merely collections of user's own homepages. For example, the GeoCities website provided a place where a user could display their own homepage which they designed themselves using third party software tools. These user web pages were not member profiles created or maintained in a preselected format as part of a virtual community. Instead, they were individual, unique web pages created by each user. Geocities merely hosted the web pages and allowed users to place their home page in a certain location within the Geocities main web site.

For most of the prior art web sites cited by Grimshaw, the evidence he relied upon consists of printouts from an internet archive site, www.archive.org. In many instances, the information relied upon by Grimshaw appears to have been archived after the filing date of the '309 patent and, therefore, provides no information about how the website operated prior to the filing date. For other prior art web sites, at least some of the printouts from the internet archive site appear to have been archived after the filing date of the '309 patent. In my analysis below, I have noted where certain information relied upon by Grimshaw as support for his opinions on validity is unreliable due to the apparent date of the documents from which the information is taken.

III. DISTINCTIONS OVER THE PRIOR ART

I have been asked to review the prior art cited by Grimshaw and to consider whether claims 1 or 5-10 of the '309 patent are invalid in light of the prior art. Based on my analysis, I have concluded that claims 1 and 5-10 are distinct from the cited prior art and not rendered invalid. Grimshaw addresses two specific web sites in his report, Who's Who Online and Geocities. The remaining references he addresses briefly in charts attached to his report.

A. Who's Who Online

The Who's Who Online reference was a website that made the information from the print versions of the Who's Who series of books available on the Internet.

Welcome to Who's Who Online(SM)



... the net best place to be!

It included web pages describing people who had achieved some distinction or notoriety in their particular field or academic pursuit. Who's Who Online used a self-identification mechanism to identify people who had distinguished themselves in their particular area(s) of expertise. (TWITTER0004691). Much like the print versions or the CD versions of the Who's Who books, the online version did not provide a mechanism allowing a user to update or revise their profile information in real time. The information relied upon by Grimshaw clearly indicates that any updates were not made in real time. For example, one of the archived pages produced by Twitter explains that someone at Who's Who would have to be involved to update an entry by a user.

Can I correct my entry if I make an error?

This is the 21st Century equivalent of typesetting: please key data carefully and be sure to use capital letters to begin all proper nouns unless they are normally written entirely in lower case. If you catch an error immediately after submitting the data, (when you "search" your record, go back immediately and rekey the data. We'll look at the most recent entry, and delete the earlier one, provided that they are entered on the same date. (TWITTER00004666).

This is not an update made in real time as a person working for Who's Who Online must look at the two entries and determine which one to display on the website. The user is not actually

interacting with the profile, but submits the information to a person at Who's Who that then selects one set of information. It is the person at Who's Who that updates the information.

Even the initial information provided by the user is not available on the web site for a week.

I submitted my data and got a message that said, "You have successfully registered," what does this mean?

This means that the server accepted your submission, and that you will be able to search in **Who's Who Online(SM)** and find your profile for exactly fifteen (15) minutes from that point in time. The page will then go into review for exactly one week, during which time it will not be searchable on-site. (TWITTER00004666).

This web site simply did not allow a member to update their biographical information in real time.

The Who's Who Online web site also did not provide the capability for users to interact with one another within a virtual community. Grimshaw refers to the fact that users could subscribe to an external email forwarding system that would allow users to email others through a separate email system. As described above, external email systems do not allow members to communicate within the virtual community. Grimshaw also refers to one archived page that references features such as voice mail, faxes, and email that may be available in the future. (TWITTER00004653). There is no evidence provided that shows any of these features were ever implemented and certainly not before the filing date of the '309 patent.

Specific claim limitations not disclosed:

Preamble

Who's Who Online is not an interactive virtual community as used in the patent.

Element 1(g)

User does not update biographical information and there is no updating the information in real time. Additional information is submitted to Who's Who, and someone at Who's Who updates the information

Claim 8

See 1(g) above, Users cannot update biographical information in real time.

Claim 9

No interaction between users.

B. Geocities

As described in section II above, Geocities was a home page hosting service that allowed users to design their own web page that would then be displayed by Geocities.



Geocities did not include personal profiles that were created by processing biographical information in a preselected format. Users were free to design their web page in any manner as long as it was not a commercial site. In addition, users merely registered with Geocities by providing their email address and then were free to create a web page, which may not include

any biographical information, e.g., the NetHistory page shown on TWITTER 00004428. Also, Grimshaw cites to no evidence showing the members of Geocities could interact with non-members. At most, the members of the Geocities site would have been part of one community. Grimshaw cites to actions performed by two members of the Geocities site, rather than a member interacting with a non-member.

Specific claim limitations not disclosed:

Preamble

Geocities is not an interactive virtual community as used in the patent.

Element 1(e)

There is no profile resulting from processing biographical information in a pre-selected format, just users building their own home pages. Geocities only requires that a user enter an email address. A user may build their home page in any manner, which may not include biographical information.

Claim 6

See 1(e) above, There are no personal profiles in Geocities, only user home pages.

Claim 7

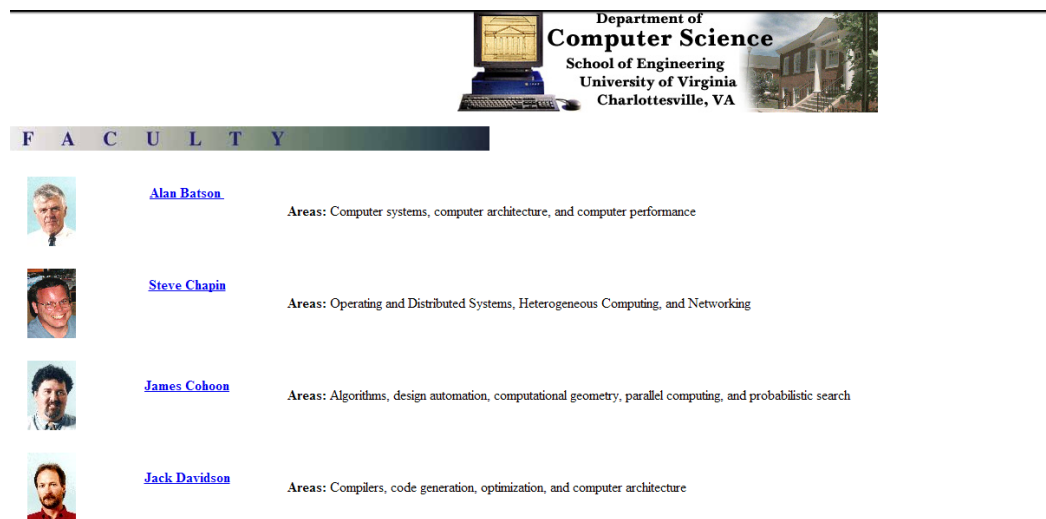
See 1(e) above, There are no personal profiles in Geocities, only user home pages.

Claim 10

There is no evidence of communication between Geocities members and non-members.

C. University Websites

Grimshaw cites to various university websites as prior art. In particular, he focused on the website for the Computer Science Department at the University of Virginia.



The university websites that were online prior to the filing of the '309 patent were very similar to other online directories. They provided a directory listing of professors in various colleges and departments within a university.

Like other online directories, there is no information that the professor's profiles were updated. In fact, there is no evidence provided by Twitter (i.e., TWITTER00004601 to TWITTER00004652) or cited by Grimshaw that demonstrates that professors at the University of Virginia even had access to their profiles. Grimshaw likewise cites to no evidence to establish that a professor could update their own profile in real time.

There is also no disclosure anywhere in the documentation produced by Twitter that the professors listed on the Computer Science Department's web page could interact with each other through a virtual community on the web site. Grimshaw refers to the email addresses listed on a

professor's home page that are part of a separate university email system. As described in section II above, listing a person's external email address does not provide the capability to interact within a virtual community.

Specific claim limitations not disclosed:

Preamble

The UVA Computer Science Department website is not an interactive virtual community as used in the patent.

Element 1(g)

No description of whether biographical information can be updated. No information whether the user can update their biographical information in real time.

Claim 8

See 1(g) above, Users cannot update biographical information in real time.

Claim 9

No interaction between members within a virtual community.

Claim 10

No interaction between members of a virtual community and non-members.

D. Martindale-Hubbell

Martindale-Hubbell was a website that provided an online directory of lawyers and law firms.



Martindale-Hubbell online was based on the prior printed version and CD versions that predated the website. It included web pages providing information about law firms and lawyers in different legal fields.

The archived pages produced by Twitter do not provide enough information to determine whether and how lawyers' profiles could be updated. Grimshaw cites to the top level page of Martindale-Hubbell online which included a link to a page labeled "Add/Update Listing". (TWITTER00004481). However, Twitter has not produced an archived page from prior to the filing date of the '309 patent that resulted from following that link. Twitter has only produced an archived page labeled "Add/Update Your Listing" that appears to have been archived after the filing date of the '309 patent. Consequently, the materials produced by Twitter provide no information about whether a lawyer could update his profile and certainly no information regarding whether it could be done in real time.

In addition, there is no description anywhere in the documentation produced by Twitter that the lawyers listed on Martindale-Hubbell could interact with each other through a virtual

community. Grimshaw just refers to the external email addresses listed on a lawyer's profile. As described in section II above, listing a person's external email address does not provide the capability to interact within a virtual community or with members outside the community.

I note that many of the printouts produced by Twitter and relied upon by Grimshaw appear to have been archived after the filing date of the '309 patent and provide no information about how the Martindale-Hubbell site operated prior to the filing date. (See TWITTER00004486, 4490-4491, 4499-4517).

Specific claim limitations not disclosed:

Preamble

Martindale-Hubbell is not an interactive virtual community as used in the patent.

Element 1(g)

No description of how biographical information can be updated. No information whether the lawyer can update their biographical information in real time.

Claim 8

See 1(g) above, Lawyers cannot update biographical information in real time.

Claim 9

No interaction between lawyers listed in the directory. Only listed external email addresses for the lawyers.

Claim 10

No interaction between lawyers listed in the directory and others not listed in the directory. Only listed external email addresses for the lawyers.

E. Care2

Care2.com was a search engine and message board service focused on environmental issues.



The Care2 website provided information about environmental issues and discussion boards for members to post messages.

I note that almost all of the printouts relied upon by Grimshaw in his charts for Care2 appear to have been archived after filing date of the '309 patent. Specifically, none of the evidence he relied upon for the elements of the asserted claims (except for the preamble and element 1(a)) appears to be dated early enough to provide any evidence that the asserted claims are rendered invalid in light of the Care2 web site. (See TWITTER 4339-4346 and 4348). It would appear that Twitter and Grimshaw have no evidence that the other features of the claims were practiced by Care2 early enough to warrant further discussion. Nonetheless, I have

addressed specific elements of the claims that are not disclosed in the Care2 materials provided by Twitter.

Even in the pages that appear to have been archived after the patent's filing date, there is no information about whether or how a member could update their profile. Grimshaw only cites to the ability of a user to enter in biographical information to create a profile. There are no references in the archived pages produced by Twitter or in Grimshaw's report that Care2 allowed a member to update their profile once it was created and certainly no evidence that a member could update their profile in real time.

Specific claim limitations not disclosed:

Preamble

Care2 is not an interactive virtual community as used in the patent.

Element 1(g)

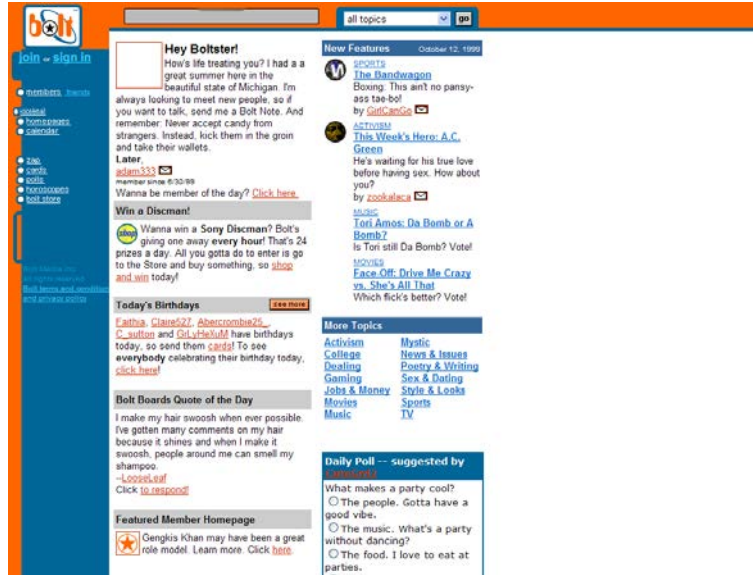
No description of how biographical information can be updated. No information whether the member can update their biographical information in real time.

Claim 8

See 1(g) above, members cannot update biographical information in real time.

F. Bolt

The Bolt website appears to have been a web hosting service where a user could display their own homepage which they designed themselves, similar to Geocities.



Twitter and Grimshaw have produced very little information about the Bolt website. The total information provided amounts to five archived pages one of which (TWITTER00004334) appears to have been archived after the filing date of the '309 patent. It appears that users designed their own unique home pages in their own format which did not necessarily include any biographical information. (TWITTER00004337). There is no information describing that a user profile was created separate from the user's home page.

Specific claim limitations not disclosed:

Preamble

Bolt is not an interactive virtual community as used in the patent.

Element 1(e)

There is no profile resulting from processing biographical information in a pre-selected format, just users building their own home pages. A user may build their home page in any manner, which may not include biographical information.

Claim 6

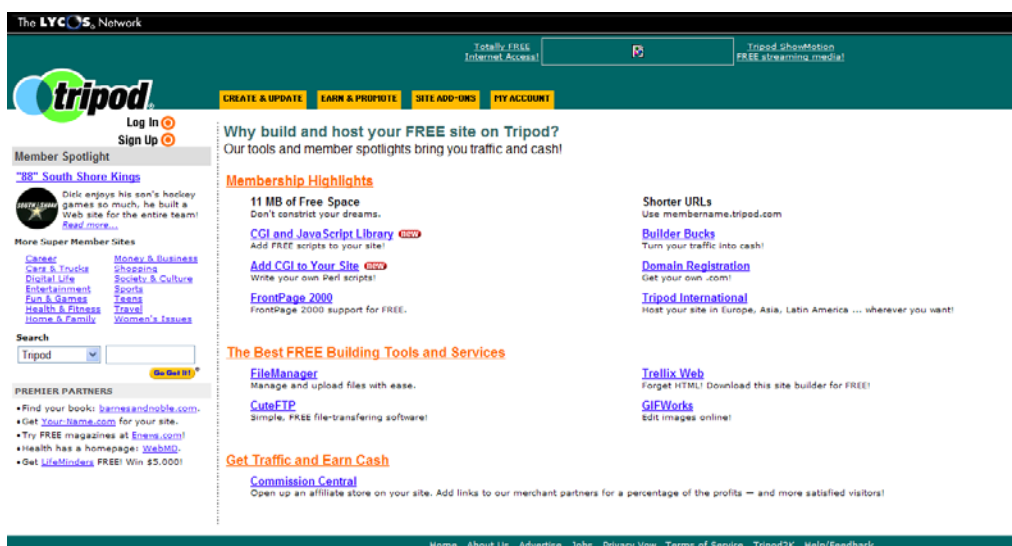
See 1(e) above, There are no personal profiles in Bolt, only user home pages.

Claim 7

See 1(e) above, There are no personal profiles in Bolt, only user home pages.

G. Tripod

Similar to the Geocities website, the Tripod website hosted home pages that were designed and built by users.



Accordingly, Tripod did not include personal profiles that were created by processing biographical information in a preselected format. Users designed their own unique home pages in their own format which did not necessarily include any biographical information, e.g., the Authentic Campaigner page shown on TWITTER00004590.

Grimshaw cites to a form in which a user may register on the Tripod site by entering in a name, birthday, gender etc. However, there is no evidence that this information was ever included on any user's home page. The user's home page was independent of any information

entered by the user and there is no evidence that Tripod ever displayed any of the information entered by the user. (TWITTER00004584).

In addition, I note that almost all of the printouts relied upon by Grimshaw in his charts for Tripod appear to have been archived after filing date of the '309 patent. Specifically, none of the evidence he relied upon for the elements of claims 1, 5, 6, 7 and 8 appears to be dated early enough to provide any evidence that these four claims are rendered invalid in light of the Tripod web site. Nonetheless, I have addressed specific elements of the claims that are not disclosed in the Tripod materials provided by Twitter. (See also, TWITTER 00004578-4596).

Specific claim limitations not disclosed:

Preamble

Tripod is not an interactive virtual community as used in the patent.

Element 1(e)

There is no profile resulting from processing biographical information in a pre-selected format, just users building their own home pages. Tripod only requires that a user enter an email address. A user may build their home page in any manner, which may not include biographical information.

Claim 6

See 1(e) above, There are no personal profiles in Tripod, only user home pages.

Claim 7

See 1(e) above, There are no personal profiles in Tripod, only user home pages.

H. Experts.com

The Experts.com web site referred to by Grimshaw provided an online directory of purported experts in various fields.



The Experts.com site is a typical online directory and provides no more information than a printed directory. It in no way represents a virtual community where members can interact with their profiles and with each other. The archived pages produced by Twitter provide no description of whether and how any updates can be made to an expert's profile. There is certainly no disclosure that an expert could update their own profile in real time. Grimshaw admits that the evidence he relies upon does not disclose a member updating their own in real time when he uses the language "upon information and belief" to support his statement that one of the experts could interact with their profile. Grimshaw provides no other information upon which he bases his conclusion.

Likewise, there is no description anywhere in the documentation produced by Twitter that the experts listed in the directory could interact with each other through a virtual community on Experts.com. Grimshaw just refers to the external email addresses listed on an expert's

profile. As described in section II above, listing a person's external email address does not provide the capability to interact within a virtual community.

Specific claim limitations not disclosed:

Preamble

Experts.com is not an interactive virtual community as used in the patent.

Element 1(g)

No description of whether biographical information can be updated. No information whether the expert can update their biographical information in real time.

Claim 8

See 1(g) above, Experts cannot update biographical information in real time.

Claim 9

No interaction between people listed in the directory. Only listed external email addresses for the experts.

Claim 10

No interaction between people listed in the directory and others not listed in the directory. Only listed external email addresses for the experts.

I. Lavalife / Webpersonals

Lavalife was an online personals website that allowed people to search through personal ads for other people that they might be interested in dating.



Lavalife allowed users to register and then post personal ads and search through other people's personal ads. There is no description of whether or how a user on Lavalife could update their biographical information. Grimshaw admits that the evidence he relies upon does not disclose a member updating their own profile in real time when he uses the language "upon information and belief" to support his statement that one of the members could interact with their profile. Grimshaw provides no other information upon which he bases his conclusion.

Likewise, there is no description anywhere in the documentation produced by Twitter that the members who posted personal ads could interact with each other through a virtual community on Lavalife. Lavalife users could only interact using their external email accounts. As described in section II above, listing a person's external email address does not provide the capability to interact within a virtual community.

I note that printouts TWITTER00004434-4437 appear to have been archived after the filing date of the '309 patent and provide no information about how the Lavalife site operated prior to the filing date.

Specific claim limitations not disclosed:

Preamble

Lavalife is not an interactive virtual community as used in the patent.

Element 1(g)

No description of whether or how profile is updated and whether the user can update their biographical information in real time.

Claim 8

See 1(g) above, No description of whether or how profile is updated and whether the user can update their biographical information in real time.

Claim 9

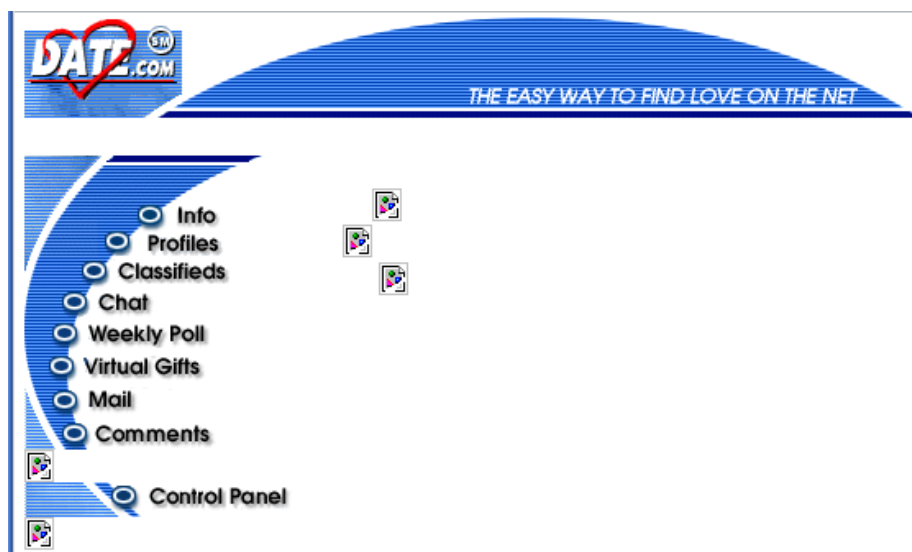
No clear description that users could interact within a virtual community. Users appear to have only had contact through external email systems.

Claim 10

No interaction between members of Lavalife and others not registered on Lavalife.

J. Date.com

Date.com was a dating website that allowed people to search for other people that they might be interested in dating.



Date.com did allow users to register and enter biographical information. However, there is no description of how a user could update their profile information and certainly nothing that describes updates being made in real time. Several of the archived pages produced by Twitter include what appears to be a link to an “Update Profile” page. (See TWITTER00004360). However, Twitter has not produced the archived page that results from selecting that link so there is no way to know whether or not a user could actually update their profile. Likewise, there is no indication that a user could update their profile in real time.

Similar to other dating websites cited by Grimshaw, there is no mechanism for users registered on Date.com to interact with others not already registered on Date.com. Users must register to post their own profile and view other members’ profiles.

I note that several of the printouts produced by Twitter and relied upon by Grimshaw appear to have been archived after the filing date of the ‘309 patent and, therefore, provide no information regarding the operation of the Date.com site prior to the filing date. (TWITTER00004356-4358).

Specific claim limitations not disclosed:

Preamble

Date.com is not an interactive virtual community as used in the patent.

Element 1(g)

No description of whether or how profile is updated and whether the user can update their biographical information in real time.

Claim 8

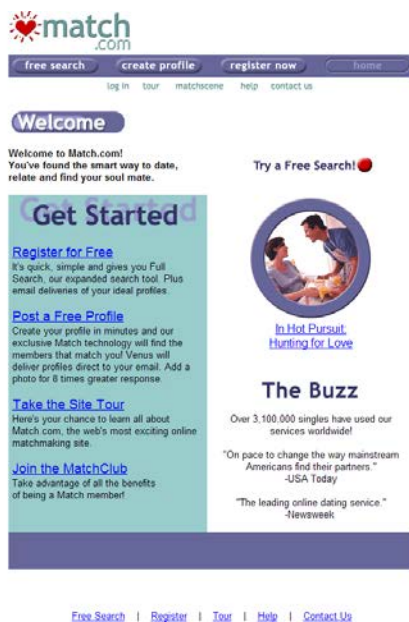
See 1(g) above, No description of whether or how profile is updated and whether the user can update their biographical information in real time.

Claim 10

No interaction between members of Date.com and others not registered on Date.com.

K. Match.com

Match.com was a dating website that allowed people to search for other people that they might be interested in dating.



All of the printouts and information provided by Twitter and relied upon by Grimshaw related to Match.com appears to have been archived after the filing date of the '309 patent and, therefore, provides no information about how the website operated prior to the filing date. (TWITTER00004518-4543). None of the evidence he relied upon for the elements of claims 1 and 5-10 appears to be dated early enough to provide any evidence that the asserted claims are rendered invalid in light of the Match.com website. Nonetheless, I have addressed specific elements of the claims that are not disclosed in the Match.com materials provided by Twitter.

The materials provided by Twitter relating to Match.com do not specify how updates can be made to a profile or whether they can be made in real time. While one of the archived pages does mention the capability of a user to update their profile, it does not specify how the user can actually make those updates. (See TWITTER00004530, at "15. Updating Your Profile"). It also does not disclose that any updates may be made in real time. Further casting doubt on this issue is the disclosure on the next page describing how a user may post a photo. (TWITTER00004531, at "16. Photos"). This passage specifies that all photos are approved by a Customer Care team

before they are posted to a user's profile. Finally, Match.com did not allow a member to communicate with non-members. Specifically, at TWITTER0004520, Match.com describes that it will not post any contact information to others or non-members.

Specific claim limitations not disclosed:

Preamble

Match.com is not an interactive virtual community as used in the patent.

Element 1(g)

No description of how profile is updated and whether the user can update their biographical information in real time.

Claim 8

See 1(g) above, No description of how profile is updated and whether the user can update their biographical information in real time.

Claim 10

No interaction between members of Match.com and others not registered on Match.com.

L. Superpages.com

The Superpages.com web site is an online directory of businesses in various categories, essentially an online version of the traditional printed Yellowpages.



The Superpages site is similar to other online directories cited by Twitter, however, it is primarily focused on providing a directory listing for businesses rather than individual people. And like other online directories, it is not a virtual community allowing users to interact with their profiles and with other users. Superpages did not publish profiles of biographical information about people, but provided information about different types of businesses.

The information listed for each business on the Superpages site could not be updated in real time. The documentation provided by Twitter indicates that the database for businesses on Superpages was updated monthly. (TWITTER00004569).

In addition, there is no mechanism for businesses listed in Superpages to interact with other businesses or people. Grimshaw cites to the listing of phone numbers, fax numbers and external email addresses for the businesses. However, as explained in section II above, none of

these external forms of communication constitute interaction between people within a virtual community.

I note that some of the printouts relied upon by Grimshaw appear to have been archived after the filing date of the '309 patent, including TWITTER00004563 and 4565.

Specific claim limitations not disclosed:

Preamble

Superpages is not an interactive virtual community as used in the patent.

Element 1(d)

Superpages does not obtain any biographical information about a person, just lists information about a business

Element 1(g)

Profile information cannot be updated in real time, only monthly

Claim 8

See 1(g) above, profile information cannot be updated in real time.

Claim 9

No interaction between businesses listed in the directory. Only listed external contacts such as phone numbers, fax numbers and email addresses for the businesses.

Claim 10

No interaction between businesses listed in the directory and others not listed in the directory. Only listed external contacts such as phone numbers, fax numbers and email addresses for the businesses.

M. Marquis Who's Who

The Marquis Who's Who web site is similar to the Who's Who Online site discussed in section III(A) above. It was based on the prior printed Marquis Who's Who publications and CD versions that predated the website. It included web pages providing information about people who had achieved some distinction or notoriety in their particular field.

About Marquis Who's Who®

For nearly a century, **Who's Who in America®** has provided accurate, concise biographies of notable Americans. That was the mission of Albert Nelson Marquis, who selected 8,602 distinguished people for the First Edition in 1899.

Today, as reference needs and audiences have grown and diversified, **Who's Who in America®** has been joined by several specialized directories, compiled by a variety of criteria, that provide important subsets to contemporary biography. Marquis Who's Who now presents biographies of nearly 788,000 leaders and achievers from around the world, and from all professions.

However, there is no mechanism described that would allow a person listed in the directory to update their profile in real time. In fact, it is not entirely clear if and how a person could make any changes to their profile. At most, changes could be submitted in hard copy and then someone at Marquis Who's Who could later modify the profile information. See the example below from TWITTER00004455:

Q: How will I know my biography is accurate?

A: If your data pass our initial screening, you will receive proofs of your sketch as prepared by our editorial staff. This will provide you with the opportunity to review, correct, and update the information presented.

This passage does not provide any specifics about the time frame in which an update may be made. This ambiguous statement could mean that the profile may be modified only once after the initial screening. The '309 patent provides that a member's profile can be modified at any time

and in real time, thus allowing that member to become known for his/her ever changing life experiences.

From the provided Web pages TWITTER0004449 to TWITTER0004480 we have not been given an example of an actual published profile. As such we do not know what if any information was provided with each profile. In addition, there is no indication that a person listed in the directory could interact with others listed in the directory or with someone not listed in the directory. Grimshaw admits in his charts for claims 9 and 10 that the Marquis Who's Who site did not include the ability of members to interact with each other or with non-members.

Specific claim limitations not disclosed:

Preamble

Marquis Who's Who is not an interactive virtual community as used in the patent.

Element 1(g)

User does not update biographical information and there is no updating the information in real time. Additional information is submitted to Who's Who, and someone at Who's Who updates the information

Claim 8

See 1(g) above, Users cannot update biographical information in real time.

Claim 9

No interaction between people listed in the directory.

Claim 10

No interaction between people listed in the directory and others not listed in the directory.

N. Fashion Model Directory

The Fashion Model Directory website provided an online directory of various models in the fashion industry.

Welcome to Fashion Model Directory

The web's most extensive collection of female fashion models and supermodels from around the world.

Please use the links above to navigate throughout the site.

- *'Updates'* provides information about changes and additions to the site over the last two months.
- The *'Model directory'* is the main feature of the site and contains model profiles and a small photograph of over 1,800 models that can be listed alphabetically or by using specific search criteria.
- *'Model of the Month'* is a rotating monthly gallery of high quality pictures of a particular chosen model.
- The *'Unknown model ID gallery'* is a collection of pictures of unidentified models. Maybe you can help ID them?
- View the *'New Faces'* section to see all the models recently added onto the site.

Copyright © 2000-2002, content and site design by *Stuart*

The archived pages produced by Twitter provide no description of whether and how any updates can be made to a fashion model's profile. There is certainly no disclosure that the model themselves could update their own profile in real time. Grimshaw admits that the evidence he relies upon does not disclose a member updating their own profile in real time when he uses the language "upon information and belief" to support his statement that a model could update the list of their hobbies. Grimshaw provides no other information upon which he bases his conclusion. Finally, Grimshaw admits that no updates could be made in real time when he notes that updates to the database were made every two weeks at that time.

Likewise, there is no description anywhere in the documentation produced by Twitter that the models listed in the directory could interact with each other through a virtual community

on the Fashion Model Directory website. Grimshaw admits in his charts for claims 9 and 10 that the Fashion Model Directory website did not include the ability of members to interact with each other or with non-members.

In addition, I note that all of the printouts relied upon by Grimshaw in his charts for Fashion Model Directory appear to have been archived after filing date of the '309 patent. None of the evidence he relied upon for the elements of claims 1 and 5-10 appears to be dated early enough to provide any evidence that the asserted claims are rendered invalid in light of the Fashion Model Directory web site. Nonetheless, I have addressed specific elements of the claims that are not disclosed in the Fashion Model Directory materials provided by Twitter. (See also, TWITTER 00004389-4396).

Specific claim limitations not disclosed:

Preamble

Fashion Model Directory is not an interactive virtual community as used in the patent.

Element 1(g)

No description of whether biographical information can be updated. No information whether a model can update their biographical information in real time.

Claim 8

See 1(g) above, the models cannot update biographical information in real time.

Claim 9

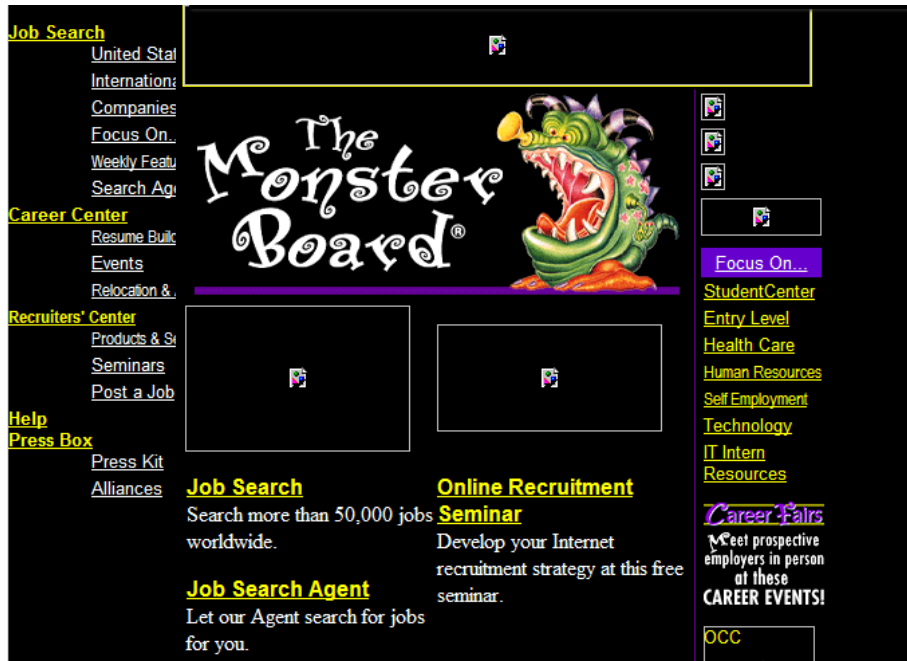
No interaction between models listed in the directory.

Claim 10

No interaction between models listed in the directory and other people.

O. Monster.com

The Monster.com website provides an online directory of people seeking jobs in particular fields.



The Monster.com website allows users to register an account and submit a resume for later viewing by potential employers. The information relied upon by Grimshaw does not sufficiently describe whether and how a job seeker could make changes to their biographical information, including whether such changes could be made in real time. In his analysis, Grimshaw makes a conclusory statement that “Candidates provided the information included in their resumes and could edit and update their profile.” (Grimshaw Exhibit 4, element 1(g)). However, Grimshaw does not explain the basis for this statement nor does he cite to any documentation for support.

In addition, there is no indication that a person listed on the Monster.com site could interact with others listed on the site or with someone not listed in the site. Grimshaw admits in his charts for claims 9 and 10 that the Monster.com site did not include the ability of members to interact with each other or with non-members.

Specific claim limitations not disclosed:

Preamble

Monster.com is not an interactive virtual community as used in the patent.

Element 1(g)

No description of whether biographical information of a job seeker can be updated in real time.

Claim 8

See 1(g) above, No description of whether biographical information of a job seeker can be updated in real time.

Claim 9

No interaction between people listed on the site.

Claim 10

No interaction between people listed on the site and other people.

P. Other Miscellaneous References Mentioned in Report

In addition to the references addressed above, Grimshaw cites to a number of other web sites and CD-Rom publications as prior art. He addresses these briefly in the chart in paragraph 45 of his report. Several of these references are only mentioned in passing or in footnotes in the report or attached exhibits. Given that Grimshaw has not provided any analysis for these

references and Twitter has produced no documentation on which he could have formed an opinion, I have not addressed them in this report.

Grimshaw states without support that the snagajob.com site worked like the Monster.com site. I would refer Grimshaw to my analysis of the Monster.com site. Grimshaw also cites to a variety of directories provided on CD-ROM's and online including the Bowker Biographical Directory which Grimshaw claims operated in the same manner and had the same features as the Who's Who CD-Rom's and Online site. I would refer Grimshaw to my analysis of the Who's Who Online site set forth above. Grimshaw cites to other directories including The Official ABMS Directory of Board Certified Medical Specialists, American Dental Association Directory on CD-ROM from 1996, West Legal Directory on CD-ROM from 1994, Congressional Staff Directory on CDROM from 1994, and Leadership Directories, which he claims operated in a similar manner to Martindale-Hubbell. I would refer Grimshaw to my analysis of the Martindale-Hubbell site.

Finally, Grimshaw cites to three books in his report for general background on the art, including "The Computer as a Communication Device", "The Virtual Community: Homesteading on the Electronic Frontier", and "Hosting Web Communities: Building Relationships, Increasing Customer Loyalty and Maintaining a Competitive Edge". He does not provide a detailed analysis of these books, and I would refer Grimshaw to my analysis of the prior art as a whole and set forth in section II of this report.

I reserve the right to supplement this report should I be provided with any additional information regarding these sites or directories.

IV. OBVIOUSNESS

Grimshaw makes conclusory statements in his report that the asserted claims of the '309 patent are obvious in light of the various publications and web sites he refers to in his report. Grimshaws report does not provide a detailed analysis, nor does he specify which references he believes would have been combined to render the claims obvious. With a proper understanding of the scope of the art presented, the asserted claims are not obvious over any combination of the references.

The prior art cited by Grimshaw can be categorized into three general groups which have been discussed in more detail in my analysis presented above: online directories, home page sites and inter-personal cites. Below are examples of the cited web sites that fall into these three categories:

1. Directories

Experts.com, Fashion Model Directory, Marquis Who's Who, Martindale-Hubbell, Monster.com, Superpages, UVA Computer Science Web site, Who's Who Online

2. Home Page Sites

GeoCities, Tripod

3. Inter-Personal Sites

Bolt.com, Care2.com, Webpersonals, Date.com, Match.com

These three categories listed above are actually very different in scope, purpose, and technology. For example, category 2 (home page sites) has nothing in common with the other two categories. Home page sites were a separate innovation of web technology allowing anyone (instead of just big companies) to get a presence on the World Wide Web. The content of these home page sites could be anything at all thus allowing each individual to create

sites based on their own imagination. These home page sites also were the genesis of the wave of new on-line only businesses.

In addition, category 1 is basically just an extension of the old idea of telephone directories (see Superpages). Each of those prior art examples are just specializations of White or Yellow Pages. Experts.com, Monster.com Martindale-Hubbell are examples of specialized White Pages (i.e., about individuals), while the rest are specializations of Yellow pages (i.e., about businesses). These directories made it easy for certain types of people or businesses to be found by others. These directories are not virtual communities and thus would not be of interest to anyone who was interested in categories 2 or 3. Likewise, because the web sites in category 3 were focused on inter-personal relationships, these sites had little in common with directories or home page sites. Those sites in category 3 had a social aspect, while directories had none (just as phone books have none). In addition, users in category 3 were focused on using Internet technology to start inter-personal relationships in real life. This is different from the virtual communities in place today that are focused on sharing life experiences online.

Someone who had ordinary skill in the art would have no reason to consider combining the sites or technologies in these 3 types of categories. Also there was no unfulfilled need that would have been solved by combining these 3 types of categories at the time of the patent filing. There is no apparent suggestion or motivation to combine the different categories of prior art in a way that would result in the features disclosed in the '309 patent.

In addition, the provided prior art is so terse that it fails to teach anything significant and lacks the detail to provide the basis of the '309 patent. As I described in more detail above, there

is very little information provided about many of the prior art web sites. The evidence relied upon by Grimshaw is limited to a few pages of archived material about each of the sites. Much of this material is general information about sites and does not provide the details of how the sites operated or performed specific functions. And in many instances, the pages provided were archived after the filing date. There is no basis for one of ordinary skill in the art to combine this general information provided about the websites to render any of the asserted claims invalid.

V. ENABLEMENT

The '309 patent describes an online, virtual community in which profiles containing biographical information about the members are published and accessible over the Internet, allowing members to interact with their profiles and with each other. The specification clearly enables one of ordinary skill in the art to practice the invention without undue experimentation. The '309 patent discloses embodiments in which the invention is implemented on web servers that are accessible over the Internet. Members' profiles are available on the Internet and consequently can be updated online in real time. For example, the specification teaches:

An additional object of the present invention is to provide a method and system for creating a *virtual community* of selected members from a community by creating individual biographical profiles of the selected members in a field of endeavor and making it available on the Internet. (Col. 2, lns. 44-49).

The '309 patent describes how each the features of the virtual community may be implemented.

The '309 patent describes in detail the various fields of endeavor that may be selected. (Col. 3, lns 46-57). The specification also explains how a list of members in a particular field of endeavor may be selected and that a list of selected members is created. (Col. 3, ln. 58 – Col. 4, ln. 7). The '309 patent also describes how biographical information about a selected member may be obtained. (Col. 4, lns 11-20; Tables 1 and2). The specification teaches an embodiment in

which the biographical information is stored on central servers that can be accessed over the Internet. (Col.5, Ins. 14-23).

The biographical information for each member is processed and personal profiles are generated in a preselected format. Figure 4 shows an exemplary embodiment of an online profile. The specification provides additional detail about the profile in Column 5:

By processing the information from the selected member (20) and using an appropriate software, a profile of the member would then be created, in an illustration shown in FIG. 4. (Col. 5, Ins. 14-17).

The specification also teaches that the personal profiles of the members are published or made available over the Internet. (Col. 5, Ins. 22-23).

By publishing the profiles of the members on the Internet, the '309 patent also teaches that members may update the biographical information in their profile online and in real time.

As shown in FIG. 2, by profiling several members in a field of endeavor (22), a *virtual community* of the famous people, or those people who wish to attain a certain status, may then be created (24). The underlying software or system would permit the members of the *virtual community* to interact with each other, as well as the members of the general public (26). The system would further have the capability to allow the members of the *virtual community* to periodically (or as desired) update, revise or modify their biographical information as they have new experiences, or if, for example, a significantly new type of information becomes relevant to their experiences (26).
(Col. 5, Ins. 24-34).

By making the profiles available to the user over the Internet, one of ordinary skill in the art is able to incorporate a feature in the system that allows profiles to be accessed and modified in real time. In addition, one of ordinary skill in the art can incorporate the feature that allows users to interact with other members within the virtual community or other users on the Internet.

VI. CONCLUSION

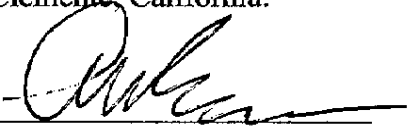
For the reasons stated above, I have concluded that none of the asserted claims of the '309 patent are rendered invalid over the cited prior art. In addition, the asserted claims are enabled by the specification of the '309 patent. I reserve the right to supplement the opinions contained herein based on new information that becomes available to me or based on any subsequent rulings by the Court.

Dated: 8/22/2011

Mark Joseph
Dr. Mark Joseph

Declaration of Mark
Joseph – Exhibit C
Filed Under Seal

Executed this 19th day of September, 2011, in San Clemente, California.



Larry W. Evans

Declaration of Larry
Evans – Exhibit A
Filed Under Seal