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Compilation of Selected Recent U.S. Case Law & Commentary Referencing Search & Information Retrieval Methods
Updated as of June 15, 2008

I. Post-Dec 2006 Federal Rules of Civil Procedure Changes

A. Cases

Ameriwood Industries, Inc. v. Liberman, 2007 WL 685623 (E.D. Mo.) (court orders expert report with number of “hits” based on negotiated search terms, with expectation that parties will continue to meet and confer to refine search based on false positives)

ClearOne Communications, Inc. v. Chiang, 2008 WL 920336 (D. Utah) (court adjudicates dispute over conjunctive versus disjunctive operators between search terms)

Disability Rights Council of Greater Washington, et al. v. Washington Metropolitan Transit Authority, 242 F.R.D. 139 (D.D.C. 2007) (Facciola, J.) (proposes use of concept searching as possible supplement to keyword searches)

Equity Analytics, LLC v. Lundin, 248 F.R.D. 331 (D.D.C. 2008) (Facciola, J.) (citing to *U.S. v. O’Keefe*, court questions effectiveness of keyword terms used in search conducted)

Haka v. Lincoln County, 246 F.R.D. 577 (W.D. Wis. 2007) (where parties were initially unable to agree on scope of search terms to be used against four terabytes of data, and where costs of search were on par with amount of damages at stake, court ordered parties to divide cost of a search using a narrowed set of terms, but that defendant-public sector entity would pay 100% of the cost of any subsequent relevance and privilege review)

United States v. O’Keefe, 537 F. Supp. 2d 14 (D.D.C. 2008) (Facciola, J.) (in criminal case, court orders further explanation of whether keyword searches were thorough, citing to authorities arising in civil case law, and suggesting that in light of interplay of the sciences of computer technology, statistics, and linguistics, expert testimony may be needed in this complex area)

Qualcomm Inc. v. Broadcom Corp., 2007 WL 2296441, at *33 (S.D. Cal.) (sanctions opinion involving underlying failure to disclose 200,000 emails prior to trial, where court

found “incredible that Qualcomm never conducted such an obvious search” using certain keywords).

Victor Stanley, Inc. v. Creative Pipe, Inc., 2008 WL 2221841 (D. Md.) (Grimm, J.) (party deemed to have waived attorney-client privilege in failing to sustain their burden that the keyword search method used to identify privileged documents before turning documents over to opposing counsel was reasonable under the circumstances).

Williams v. Taser Intern, Inc., 2007 WL 1630875 (N.D. Ga.) (court adjudicates search protocol with keywords plus use of simple Boolean operators)

B. Law Reviews, Commentaries, and Miscellaneous Publications

Jason R. Baron, *The TREC Legal Track: Origins and Reflections on the First Year*, 8 Sedona Conference Journal 251 (2007) (available on WESTLAW and LEXIS)

Jason R. Baron, Douglas W. Oard, David D. Lewis, *TREC-2006 Legal Track Overview*, http://trec.nist.gov/pubs/trec15/t15_proceedings.html (item 4)

H. Christopher Boehning and Daniel J. Toal, “In Search of Better E-Discovery Methods,” *New York Law Journal*, April 23, 2008, available at <http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=900005509469>.

David Fishel, *Defending the Accuracy of Phonetic Audio Search in Civil Discovery*, (Nexidia), available at <http://www.umiacs.umd.edu/~oard/desi-ws/> (DESI Workshop listed below)

Jeffrey Gross, *Comparing the Utility of Keyword and Concept Searches*, Digital Discovery & E-Evidence, Vol. 7, No. 9, (Sept. 1, 2007) (available online)

(Hon.) Ronald Hedges, *Rule 702 and Discovery of Electronically Stored Information*, Digital Discovery & E-Evidence, Vol. 8, No. 5 (May 1, 2008) (discussing *U.S. v. O’Keefe*)

Mia Mazza, Emmalena K. Quesada, & Ashley L. Stenberg, *In Pursuit of FRCP 1: Creative Approaches to Cutting and Shifting Costs of Discovery of Electronically Stored Information*, 13 RICH. J.L. & TECH. 11 (2007), <http://law.richmond.edu/jolt/v13i3/article11.pdf>. (concept searching)

George L. Paul and Jason R. Baron, *Information Inflation: Can the Legal System Adapt?*, 13 RICH. J.L. & TECH. 10 (2007), <http://law.richmond.edu/jolt/v13i3/article10.pdf>. (concept searching)

Mark V. Reichenbach, *In Support of Concept Search and Content Analysis*, <http://www.metalincs.com/resources/> (Metalincs white paper)

Herbert L. Roitblat, *Search and Information Retrieval Science*, 8 Sedona Conference Journal (2007) (available on WESTLAW and LEXIS)

Sedona Best Practices Commentary on the Use of Search and Information Retrieval Methods in E-Discovery (August 2007 public draft),
http://www.thesedonaconference.org/content/miscFiles/publications_html

Sedona Principles, Second Edition: Best Practices Recommendations & Principles for Addressing Electronic Document Production (June 2007) (Principle 11 discusses search methods),
http://www.thesedonaconference.org/content/miscFiles/publications_html

Stephen Tomlinson, Douglas W. Oard, Jason R. Baron, Paul Thompson, "Overview of the TREC 2007 Legal Track," *available at*
http://trec.nist.gov/pubs/trec16/t16_proceedings.html

C. Ongoing Research and Workshops

<http://trec-legal.umiacs.umd.edu/> (NIST TREC Legal Track)
(see also "Open Letter to Law Firms and Companies in the Legal Tech Sector Re: Invitation to Participate in the TREC Legal Track," at <http://trec-legal.umiacs.umd.edu/> and at www.thesedonaconference.org/publications.)

<http://www.umiacs.umd.edu/~oard/desi-ws/> Workshop on Supporting Search and Sensemaking For Electronically Stored Information in Discovery Proceedings (DESI), Eleventh International Conference on Artificial Intelligence and Law, Palo Alto, June 4, 2007

<http://www.cs.ucl.ac.uk/staff/S.Attfield/desi/> Second International Workshop on Sensemaking for Electronically Stored Information in Discovery Proceedings (DESI II), London, U.K., June 25, 2008

<http://www.ediscoveryinstitute.org/> (legal nonprofit research project)

D. Blogs, Webinars, etc.

<http://ralphlosey.wordpress.com/2008/06/08/hundredth-blog-thoughts-on-search-and-victor-stanley-inc-v-creative-pipe-inc/>

http://abajournal.com/news/e_discovery_disclosure_goof_waived_attorney_client_privilege_judge_rules

<http://ralphlosey.wordpress.com/2007/09/16/sedonas-new-commentary-on-search-and-the-myth-of-the-pharaohs-curse/>

<http://www.ohiotaxlaw.com/legalservices/practice/litigation/ediscotech/eblog/catDisplay.aspx?id=21>

<http://kmpipeline.blogspot.com/2007/09/new-sedona-conference-comments-lend.html>

<http://danmichaluk.wordpress.com/2007/09/22/sedona-conference-search-and-retrieval-draft-paper/>

http://ontolog.cim3.net/cgi-bin/wiki.pl?ConferenceCall_2007_08_23 (J. Baron webinar on “Lawyers, Language, and Legal Risk: Emerging Issues in E-Discovery” for Ontolog Forum, with powerpoints & archived podcast)

<http://chrisdale.wordpress.com/2007/08/31/e-disclosure-2-needles-and-haystacks-3-keywords/>

II. Criminal Case Law Re: Search Protocols

United States v. Adjani, 452 F.3d 1140 (9th Cir. 2006) (issue of the propriety of seizing computers wholesale versus police conducting less intrusive, targeted keyword searching to segregate out intermingled relevant from nonrelevant evidence, discussed in 4th Amendment “search and seizure” context; held, issuance of search warrant arguably overbroad but seizure upheld as reasonable under circumstances)

United States v. Hill, 459 F.3d 966 (9th Cir. 2006) (same)

United States v. Comprehensive Drug Testing, 513 F.2d 1085 (9th Cir. 2008) (same)