Tom Ashley JD, PMP, PSM I

Senior Software Consultant

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Quandary Peak Research
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I have accumulated over fourteen years of experience in the IT profession, having worked in both government and the private sector. In my role at Quandary Peak Research, I use analytic procedures to craft expert reports on various software-related issues, such as copyright and patent infringement, trade secret misappropriation, and system implementation failure. I employ structured data analytics to forensically analyze project schedule delays, assess software performance, and conduct data-based comparisons of program source code and user interfaces to identify potential instances of copying.

Before serving as an expert witness, I pursued a JD at the American University Washington College of Law while working full-time at the NIH's Center for Information Technology. Following law school, I interned at an immigration defense law firm, where I researched and drafted appellate briefs for cases before the Board of Immigration Appeals and the United States Court of Appeals for the Sixth Circuit. Before pursuing my law degree, I earned a B.A. in Computer Science, cum laude, from Carleton College. Additionally, I hold a Project Management Professional (PMP®) certification from the Project Management Institute and a Professional Scrum Master (PSM I®) certification from Scrum.org.

Education

Juris Doctor
American University Washington College of Law | May 2011

B.A. in Computer Science, Cum Laude
Carleton College | June 2004

Bar Admissions

Member of the Maryland Bar | Dec 2011

Employment

Senior Software Consultant
Quandary Peak Research | Washington D.C. | Jan 2024–Present

– Providing software analysis and expert witness testimony in software-related litigation, including patent and copyright infringement, theft of trade secrets, breach-of-contract, and other matters.
– Author expert reports on software-related issues using analytic procedures.

Manager

DisputeSoft LLC | North Bethesda, MD | Sept 2013–Dec 2023

– Served as testifying expert, consulting expert, lead technical analyst, and project manager, responsible for executing and coordinating the research, drafting, and editing of expert reports regarding a wide range of software-related matters, including copyright and patent infringement, trade secret misappropriation, and system implementation failure. Forensically analyzed project schedule delays, tested software performance, and conducted comparisons of program source code and user interfaces to determine whether copying has occurred.

Legal Intern

Law Offices of George P. Mann and Associates, P.C. | North Bethesda, MD | 2012–2013

– Provided legal assistance to senior attorneys in the handling of immigration/deportation proceedings. Researched, drafted, and edited appellate briefs and motions to be filed with the Board of Immigration Appeals and United States Courts of Appeal. Researched and drafted summaries of relevant areas of immigration law for use by senior attorneys.

IT Continuity Assurance Specialist

Science Applications International Corporation | Reston, VA | 2006–2011

– Coordinated information technology emergency responders at the National Institutes of Health. Directed review meetings between departmental managers in response to service interruptions. Compiled and drafted incident summaries and action items. Researched, compiled, and reported on weekly IT service desk usage patterns to upper management. Drafted emergency informational bulletins to be distributed during service interruptions. Documented and edited internal procedure documents to reflect best practices.

Expert Testimony and Reports

- **Palinode, LLC v. Plaza Services, LLC and Provana, LLC** | 2023
  Jurisdiction: United States District Court for the District of Delaware
  Case Number: 1:21-cv-01378-MN
  Deposition: March 23, 2023
  Expert report and reply report submitted Jan 17, 2023 and Mar 6, 2023, respectively, on behalf of Plaintiff.

- **GalaxE.Healthcare Solutions v. RxSense, LLC** | 2022
  Jurisdiction: Supreme Court of the State of New York
  Case Number: 654114/2019
  Deposition: September 9, 2022.
  Expert report submitted June 6, 2022 on behalf of Plaintiff and Counter-Defendant.

- **16 Willow Avenue, LLC v. Towson Green Community Association, Inc, et al.** | 2022
  Jurisdiction: Maryland Circuit Court for Baltimore County
  Case Number: C-03-cv-19-002745
  Expert report submitted May 31, 2022 on behalf of Plaintiff.

- **ConsultUS, LLC and Commoditrade, LLC v. CPC Commodities and ISTT, Inc** | 2022–2023
  Jurisdiction: United States District Court for the Western District of Missouri
  Case Number: 4:19-cv-00821-FJG
  Expert report and two supplemental reports submitted January 14, 2022, May 6, 2022, and May 27, 2022, respectively, on behalf of Defendant ISTT, Inc. Delivered pre-trial testimony at hearing on March 30, 2023.

- **Certification Trendz and Freetech Services, Ltd. v. Kashif Rashid, et al.** | 2016
  Jurisdiction: United States District Court for the Eastern District of Virginia
  Expert declaration submitted August 12, 2016 on behalf of Plaintiffs. Appeared at temporary restraining order hearing on August 26, 2016.

Litigation Consulting

- **Zextras S.R.L. v. Synacor, Inc.** | Mar 2024-Present
  Jurisdiction: US District Court for the Southern District of New York
  Case Number: 1:23-cv-07937
  Counsel: Hodgson Russ LLP
  Nature of Suit: Copyright, Breach of Contract

- **Meta Platforms, Inc. v. Bright Data Ltd.** | Jan 2024-Feb 2024
  Jurisdiction: US District Court for the Northern District of California
  Case Number: 23-cv-00077
  Counsel: Proskauer Rose LLP
  Nature of Suit: Breach of Contract

- **iSpot.tv, Inc. v. Nadya Teyfukova and Entertainment Data Oracle, Inc.** | Jan 2024-Present
  Jurisdiction: US District Court for the Central District of California
  Case Number: 2:21-cv-06815
  Counsel: Holwell Shuster & Goldberg LLP
  Nature of Suit: Breach of Contract, Trade Secret

- **MaddenCo, Inc. v. HG AutoTech LLC** | Jan 2024-Present
  Jurisdiction: US District Court for the Southern District of Indiana
  Case Number: 3:22-cv-00173-RLY-MPB (filed 10/31/22)
  Counsel: Delk McNally LLP | Breazeale, Sachse & Wilson, LLP
  Nature of Suit: Copyright (Third-Party Neutral)

Software Project Failures

- **Parties' names withheld** | 2022
  Nature of Suit: Software Project Failure
  In this software failure dispute involving the construction of a pharmacy benefit management system, reviewed source code repository metadata to quantify the extent of the parties' respective contributions to the software. Conducted quantitative analysis to determine the extent to which the system was modified after project termination. Authored an expert report and testified at deposition.

- **Eaton Steel Bar Company, Inc v. Plex Systems, Inc** | 2020
Nature of Suit: Software Project Failure
In a software failure case involving the configuration and installation of an enterprise resource planning system for a steel distribution company, reviewed project status reports, defect records, functional requirements, technical requirements, and project design documents to determine the vendor's compliance with contractual requirements and industry best-practices. Conducted interviews with key project personnel. Case settled prior to submission of expert report.

- **Cerner Limited v. Fujitsu Services Limited** | 2020
Nature of Suit: Software Project Failure
In this software implementation dispute involving the installation and customization of an electronic health records ("EHR") system, served as lead analyst and project manager of a six-person consulting team. Coordinated the review and analysis of contractual documents to gain a detailed understanding of the parties' respective project responsibilities. Drafted detailed summaries of analytical procedures relating to defect analysis, project management, and release management for negotiation with opposing counsel. Directed and monitored the quantitative analysis of project defect records. Conducted multiple interviews of key project personnel. Case settled prior to submission of expert report.

- **PCMS Datafit, Inc v. Rite Aid Headquarters Corp.** | 2019
Nature of Suit: Software Project Failure
In a software failure case involving the installation and customization of a Java-based point of sale ("POS") system, served as lead analyst and project manager, overseeing the activities of a three-person consulting team. Coordinated the review and analysis of contractual documents, change orders, project plans, and project status reports to evaluate the timeliness of the vendor's completion of key deliverables. Directed the investigation of production defect records in HP Application Lifecycle Management ("ALM") and JIRA to support an opinion that the vendor could not have stabilized the production system within a reasonable timeframe after go-live. Coordinated the drafting of a preliminary expert report supporting an opinion that the customer was justified in terminating the development project. Case settled prior to submission of final expert report.

- **Crawford & Company v. Cognizant Technology Solutions U.S. Corporation** | 2019
Nature of Suit: Software Project Failure
In a software failure case involving a failed implementation of PeopleSoft Financials, served as project manager of a three-person consulting team. Coordinated the development of automated scripts for assessing the quality of PeopleSoft source code. Directed the manual review of PeopleSoft source code by junior staff. Case settled prior to submission of expert report.

- **TTI, Inc v. Infosys Limited** | 2018
Nature of Suit: Software Project Failure
In this software failure case involving the modernization of the plaintiff's legacy mainframe hardware and supporting batch applications, conducted extensive review of project status reports, e-mail correspondence, and change request information to determine whether the plaintiff impeded the vendor's ability to complete the project according to the intended schedule and budget. Compiled quantitative analyses of defect tracking data to evaluate the vendor's efforts to stabilize the software at issue. Conducted interviews of key project personnel. Drafted content for expert report rebutting the plaintiff's claim that the vendor was solely responsible for budget and schedule overruns. Case settled prior to arbitration hearing.

- **Bisk Education, Inc v. Aspect Software, Inc** | 2018
Nature of Suit: Software Project Failure
In a software failure case involving a failed upgrade of a cloud-based Customer Relationship Management ("CRM") system, reviewed project status reports, project plans, functional/technical specifications, and staffing documentation for quality and completeness. Reviewed "sprint" planning documents to evaluate the vendor's adherence to Agile SDLC best-practices. Case settled prior to submission of expert report.

- **MillerCoors LLC v. HCL Technologies Limited and HCL America, Inc** | 2017
  Nature of Suit: Software Project Failure
  In this software failure case involving a failed upgrade of an ERP system for a large beer manufacturing company, reviewed functional requirements, technical requirements, and project design documents to determine the vendor's compliance with contractual requirements and industry best-practices. Compiled data analytics relating to the vendor's defect remediation efforts. Researched project planning documents to evaluate the quality of the vendor's project management activities during the engagement. Case settled prior to submission of expert report.

- **Liberian Shipping and Corporate Registry v. Applied Information Sciences, Inc** | 2016
  Nature of Suit: Software Project Failure
  In a software failure case involving a failed upgrade of an accounting system and operational database for a shipping and corporate registry, reviewed functional and technical requirements, defect records, and project management documents to assess compliance with Agile SDLC best-practices, contractual requirements, and industry standards. Compiled extensive data-based analyses of the vendor's TFS database to determine defect divergence/convergence patterns. Assisted counsel in drafting of technical questions for use in cross-examination of opposing experts at trial. Drafted content for expert report and rebuttal report, resulting in substantial arbitration award on behalf of the client.

- **Academy, LTD. v. Wipro Limited and Wipro Inc** | 2015
  Nature of Suit: Breach of Contract
  In a breach of contract case involving the implementation of an Oracle Retail Merchandising System for a sporting goods retailer, reviewed functional requirements, technical requirements, and business process documentation to determine timeliness of delivery, compliance with contractual requirements, and compliance with industry standards.

- **Mary Rutan Hospital v. NextGen Healthcare Information Systems, LLC** | 2014
  Nature of Suit: Software Project Failure
  In this software failure case regarding a failed implementation of hospital management software, compiled defect data analytics to determine if contractual agreements for support had been met. Drafted content for expert report.

- **CGI Information Systems and Management Consultants Inc v. eHealth Ontario** | 2014
  Nature of Suit: Software Project Failure
  In a software failure case involving the implementation of an online diabetes registry project, reviewed adequacy of project design documents to determine whether purchaser's rejection of vendor's design was justified. Drafted content for expert report.

- **Arc-Com Fabrics, Inc v. Third Wave Business Systems, LLC** | 2013
  Nature of Suit: Software Project Failure
  In a software project failure case involving the deployment of an SAP Business One system for use by a textiles manufacturer, drafted content for an expert report opining on issues of system instability, slow system performance, poor source code quality, and deviations from industry standard practices.

- **United States Cellular Corporation v. Amdocs Software Systems Limited** | 2013
  Nature of Suit: Software Project Failure
  A software failure matter brought by the fifth-largest wireless telecommunications provider in the U.S. against a leading provider of software and services in the telecommunications and other sectors. During a vast and complex implementation of a customer care and billing system, the parties disputed their respective responsibilities and liability for cost overruns and a delayed go-live. However, instead of terminating the project and entering litigation, the parties documented their disputes and cost overruns in the form of Project Change Requests (PCRs), continued the implementation, and achieved a successful go-live and on-going relationship while resolving the disputed PCRs in arbitration. Performed schedule delay analysis and researched relevant industry standards. Case settled prior to submission of expert reports.

- **CedarCrestone, Inc v. Affiliated Computer Services, LLC, et al.** | 2013
  Nature of Suit: Software Project Failure
  In a software project failure case involving a failed PeopleSoft upgrade, researched functional specification documents to reach an opinion regarding the quality and thoroughness of the vendor's project design.

- **California State Controller's Office v. SAP Public Services, Inc** | 2013

  Nature of Suit: Software Project Failure

  In a software failure case involving a failed payroll system implementation for the state of California, researched and summarized key issues involved in the litigation, including adequacy of software design, testing, and defect resolution. Drafted content for expert report and rebuttal opinions.

Breach of Contract Disputes

- **Parties' names withheld** | 2022

  Nature of Suit: Breach of Contract

  In a contract dispute regarding a contested easement agreement, analyzed document comparison metadata to determine whether contract modifications were properly tracked. Researched workflows used in relevant document comparison software products. Authored expert report describing how contract documents would have appeared had modifications been properly preserved.

- **Hawai'i Department of Transportation v. Continental Casualty Company, et al.** | 2021

  Nature of Suit: Breach of Contract

  In this breach of insurance contract dispute involving a contested settlement agreement covering a failed software implementation, reviewed project status reports, project plans, functional/technical specifications, and staffing documentation to determine the parties' responsibilities for delays encountered on the project. Reviewed project invoices and supporting correspondence to reach opinions on the reasonableness of the stipulated damages award amount. Drafted technical deposition questions for use by counsel. Drafted content for expert report and rebuttal report. Case settled before trial.

- **ConnectYourCare, LLC v. Conduent HR Services, LLC** | 2019

  Nature of Suit: Breach of Contract

  In a breach of contract case involving a dispute over the cost of migrating data from a legacy database system, reviewed project plans and cost estimation documents to determine whether the migration vendor adequately supported its cost estimate. Drafted technical deposition questions for use by counsel. Drafted content for expert report and rebuttal report. Case settled before trial.

- **Tritium, Inc v. TritiumSoft, LLC** | 2018

  Nature of Suit: Breach of Contract

  In this breach of contract dispute involving the purchase of an endpoint security software product, reviewed the seller's C++ source code to identify and quantify the usage of open source and unlicensed third-party materials. Investigated the purchaser's source code production to determine completeness and integrity. Reviewed purchaser's source code for the presence of functionality contained in seller's software. Conducted detailed quantitative analysis of the purchaser's Jira database instance to compile defect resolution statistics. Analyzed quality of seller's source code using automated tools and compiled quality metrics. Reviewed deposition transcripts of technical fact witnesses. Authored expert report summarizing results of analysis. Case settled before final submission of expert report.

- **Sam's West, Inc v. Nicole Aloni** | 2014

  Nature of Suit: Breach of Contract

  In a breach of contract case involving the licensing of proprietary culinary articles and recipes, researched defendant's website and mobile application for evidence of inappropriate or misattributed uses of plaintiff's proprietary materials. Captured screenshots of current and archived versions of defendant's website to demonstrate inappropriate usage of proprietary materials. Drafted technical deposition questions for counsel. Drafted content for expert report.

Trademark Infringement Disputes

- **Certification Trendz and FreeTech Services, Ltd. v. Kashif Rashid, et al.** | 2016
Nature of Suit: Trademark
In this trademark infringement case against individuals and corporations operating out of the U.K. and Pakistan, investigated whether the defendants were operating websites containing infringing content. Compiled extensive documentation regarding the extent and duration of trademark infringement. Charted networks of individuals infringing on the plaintiff's trademarks, including information such as names, addresses, email addresses, and payment processing information. Drafted a declaration summarizing trademark infringement findings, and attended a hearing in support of plaintiff's successful motion for a Temporary Restraining Order against defendants. Case subsequently settled.

Copyright Infringement and Trade Secret Misappropriation Disputes

- **Serrala U.S. Corp. v. James Paschke and Paschke Consulting, Inc** | 2022
Nature of Suit: Trade Secret, Copyright Infringement
In this matter involving allegations of trade secret misappropriation and copyright infringement, conducted automated comparisons of the parties' SAP ABAP source code to determine the extent of alleged copying. Conducted extensive manual tracing of the parties' source code to determine the degree of non-literal similarity between competing products. Conducted industry research to determine the degree to which similar functionality was well-known in the software industry at the time of alleged misappropriation. Case settled prior to submission of expert report.

- **ConsultUS, LLC and Commoditrade, LLC v. CPC Commodities and ISTT, Inc** | 2021
Nature of Suit: Trade Secret, Copyright Infringement
In a trade secret misappropriation and copyright infringement suit relating to software for managing agricultural commodities, conducted manual analysis of ColdFusion source code to locate alleged trade secret content. Analyzed document record to determine whether plaintiffs engaged in reasonable efforts to maintain the secrecy of alleged trade secrets. Conducted automated comparisons of source code sets to quantity the extent to which the plaintiffs created original material. Drafted expert report and two supplemental reports. Case settled prior to trial.

- **Palinode, LLC v. Plaza Services, LLC and Provana, LLC** | 2021
Nature of Suit: Trade Secret, Breach of Contract
In this trade secret misappropriation and breach of contract case, inspected the parties' respective systems to identify functional and user interface similarities. Conducted manual reviews of the parties' source code to identify key workflows. Reviewed document record to determine whether the alleged trade secrets could be replicated using publicly available materials. Drafted expert report, rebuttal report, and testified at deposition. Case settled immediately prior to trial.

- **United Merchant Services, Inc v. JK Systems, Inc TX and Ho Kim** | 2020
Nature of Suit: Copyright Infringement
In a copyright infringement suit relating to dry cleaning software, conducted automated and manual comparisons of Visual Basic files to quantify the extent of alleged copying. Compiled statistics relating to the percentage of source code that was allegedly copied. Created demonstrative depicting the similarities and differences between the parties' respective source code collections. Case settled prior to submission of expert report.

- **Avionté, LLC v. Aqore, LLC** | 2020
Nature of Suit: Trade Secret
In this trade secret misappropriation suit relating to staffing industry software, reviewed publicly available websites for evidence of public disclosure of alleged trade secret functionality. Assisted counsel in drafting technical discovery requests and deposition questions. Created demonstratives depicting the differences between the parties' software user interfaces. Case settled prior to submission of expert report.

- **Parties' names withheld** | 2019
Nature of Suit: Trade Secret, Breach of Contract
In a matter involving allegations of trade secret misappropriation and breach of contract, analyzed whether certain requirements were met based on defect records and other materials. Evaluated the level of detail set forth in the plaintiff's invoices. Analyzed design documents and other materials allegedly misappropriated and provided rebuttal opinions and analysis. Drafted content for opening expert report, rebuttal report, and surrebuttal report.

- **Knowmadics, Inc v. Lisa Cinnamon and LDX, Inc** | 2019
Nature of Suit: Copyright Infringement
In a software copyright infringement suit, conducted programmatic comparisons of C#, Java, C++, and SQL files to quantify the extent to which the defendant copied plaintiff's source code. Compiled statistics relating to the percentage of source code that was copied. Conducted functional tracing of source code to determine whether the defendant copied the structure, sequence, or organization of the plaintiff's system. Conducted automated and manual reviews of the parties' respective database schemas to quantify the extent of copying. Drafted content for expert report.

- **The Studer Group, LLC. v. The Cleveland Clinic Foundation** | 2013
Nature of Suit: Trade Secret, Copyright Infringement
In this copyright infringement and trade secret misappropriation case, assisted in preparing a substantial similarity analysis to determine if non-literal elements of the programs' screen displays, including the selection, composition, and arrangement of individual elements of the screen displays, were substantially similar.

Software Patent Infringement Disputes

- **Pre-Litigation Infringement Analysis** | 2021
Nature of Suit: Patent Infringement
In this pre-litigation patent infringement assessment, drafted preliminary claim charts depicting the usage of the client's patented invention by a competing organization. Analyzed network traffic to understand the types of data exchanged by the competing product and to demonstrate a likelihood of patent infringement.

- **PTP OneClick, LLC v. Avalara, Inc** | 2019
Nature of Suit: Patent Infringement
In a patent infringement and trade secret misappropriation action involving technology for automatic tax return preparation, directed the manual review of the client's C++ source code to locate allegedly infringing technology. Drafted comprehensive written summary of source code review findings.

- **Patent Litigation Source Code Analysis** | 2019
Nature of Suit: Patent Infringement
In a patent infringement suit involving patents relating to video compression and motion estimation, conducted extensive review and tracing of the client's C/C++, assembly, and Verilog source code to evaluate the strength of potential non-infringement arguments. Conducted detailed review of the client's legacy video conferencing applications to support patent invalidity contentions. Drafted comprehensive review of source code findings for counsel. Case settled prior to trial.

- **Patent Litigation Prior Art Demonstration |** 2018
  Nature of Suit: Patent Infringement
  In this patent infringement action involving patents relating to video compression, prepared a virtual machine environment for demonstrating prior art software products relating to the patents at issue. Installed prior art software in the virtual environment to demonstrate relevant functionality. Case settled prior to trial.

- **Philips Electronics N.V. v. HTC Corporation |** 2018
  Nature of Suit: Patent Infringement
  In a patent infringement action involving patents for touch screen functionality on Android-based smartphones, reviewed and traced the client's Java source code to understand and document the system's functionality for screen magnification, scrolling, and virtual keyboards. Drafted comprehensive summary of source code review findings.

- **Pre-Litigation Patent Investigation** | 2017
  Nature of Suit: Patent Infringement
  In this pre-litigation assessment for a large computer chip manufacturer, researched a competitor's modifications to the Linux kernel and accompanying drivers to determine whether the client's CPU power management patents had been infringed upon. Conducted detailed reviews of operating system source code to ascertain the power management capabilities of the rival manufacturer's hardware.

- **Securus Technologies, Inc v. Global Tel*Link Corp.** | 2017
  Nature of Suit: Patent Infringement
  In a patent infringement suit involving a patent for a prison inmate telephone system, completed a prior art "stand up" kit to demonstrate the existence of claimed functionality. Reviewed and recompiled client source code to gain a sophisticated understanding of relevant software. Assembled inmate call processing server and installed a reconstructed version of prior art software. Case settled prior to trial.

- **Credit Acceptance Corporation v. Westlake Services, LLC, et al.** | 2013
  Nature of Suit: Patent Infringement
  In a Covered Business Method Review before the United States Patent and Trademark Office Patent Trial and Appeals Board, analyzed challenged claims in light of the specification and extrinsic evidence, including U.S. and foreign patents and patent applications, to determine the broadest reasonable interpretation of the claims, for the purpose of opining on the validity of the challenged claims.

- **Biolumix, Inc v. Centrus International, Inc** | 2013
  Nature of Suit: Patent Infringement
  In a patent infringement suit involving a patent for a device to detect the presence of microorganisms in a sample, reviewed and documented the "look and feel" of the relevant systems to reach findings regarding substantial similarity between the accused product and the patented device.

Journal and Magazine Articles

- Thomas Ashley | Nov 2016
  Practical Advice to Beat Piracy – Intellectual Property Magazine

Certifications

- **Project Management Professional (PMP®)**
  Industry-standard best practices in Project Management
  Project Management Institute
  www.pmi.org

- **Professional Scrum Master I (PSM I®)**
  Best Practices for Implementation of Agile Software Development Methods Scrum.org™
  www.scrum.org

Programming Languages

ABAP, C, C++, C#, Java, JavaScript, Go, HTML, Common LISP, Perl, PHP, Prolog, Python, Scheme, SQL/T-SQL/MySQL, XML