

# **EXHIBIT 9**

**RUS, MILIBAND & SMITH**

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

VON KARMAN TOWERS, 2211 MICHELSON DRIVE, SEVENTH FLOOR  
IRVINE, CALIFORNIA 92612  
TEL 949.752.7100 FAX 949.252.1514  
WWW.RUSMILIBAND.COM

RONALD RUS  
JOEL S. MILIBAND  
RANDALL A. SMITH  
LAUREL R. ZAESKE  
LEO J. PRESIADO  
CATHRINE M. CASTALDI  
M. PETER CRINELLA  
KATHRYN J. BESCH  
SARA A. MAUNDER

OF COUNSEL  
PATRICK K. McCLELLAN

WRITER'S E-MAIL  
LPRESIADO@RUSMILIBAND.COM

REFERENCE NUMBER  
2785-0002

February 10, 2010

*VIA FACSIMILE*

Colleen M. Kennedy, Esq.  
O'Melveny & Myers LLP  
Two Embarcadero Center, 28<sup>th</sup> Floor  
San Francisco, CA 94111

Re: *eBay, Inc. v. Digital Point Solutions, Inc., et al.*  
USDC Case No. CV-08-4052 JF

Dear Colleen:

This letter is written in response to your letter of earlier today.

Your contention that a 4 week (30 day) time line was not discussed at the conclusion of the January 29<sup>th</sup> hearing is false. As I just confirmed with Mr. Campbell, he suggested a 4 week time line at the conclusion of the hearing to which Mr. Eberhardt did not object and even acknowledged that compiling the responses "would take some time." My apologies for confusing Mr. Foreman with Mr. Campbell as the person who made the time line suggestion.

Your contention that I have refused to engage in a telephonic meet and confer is equally incorrect. I simply responded to your letter in writing. I never indicated that I would not meet with you telephonically and, in fact, concluded the letter by inviting you to contact me. You can pick up the phone as easily as I can.

RUS, MILIBAND & SMITH

Colleen M. Kennedy, Esq.

February 10, 2010

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So there is no confusion - **I would like to participate in a telephonic meet and confer with you regarding the matter addressed in our respective letters.** I am available Friday, February 12<sup>th</sup>, between 10:00 a.m. and 11:30 a.m., or between 1:30 p.m. and 5:00 p.m. Please let me know what time you will be calling.

Very truly yours,

RUS, MILIBAND & SMITH  
A Professional Corporation



LEO J. PRESIADO

cc: Stewart Foreman, Esq.  
Patrick McClellan, Esq.  
Ross Campbell, Esq.