

EXHIBIT D

From: David Perison
Sent: Thursday, August 13, 2009 1:35 PM
To: Joseph S. Grinstein; Fish Richardson Attorneys; Harry L. Gillam, Jr.; Melissa R. Smith; Google-Function Media
Cc: wolff@fr.com; gil@gillamsmithlaw.com; Justin A. Nelson; Max L. Tribble; Stacy Schulze; Sandeep Seth; chenry@capshawlaw.com; charley@pbatyler.com; ederieux@capshawlaw.com; Jeremy Brandon; Stan Karas
Subject: RE: Function Media v. Google -- Reduction of Claims

Joe,

I write in response to your email of August 10, 2009 regarding "Election of Claims."

Initially, last week you informed us that Plaintiff would identify the 20 claims Plaintiff intends to take to trial in this case. As we confirmed in our response to your email, we took this to mean Plaintiff would be reducing its asserted claims in this case to no more than 20. At no time did you limit this to "the first trial of this matter." Now, however, you have sent us a list of claims that you say you intend to try in the "first trial" of this matter. We do not understand this reference and would not be willing to agree that Plaintiff may have two trials.

Additionally, while you do list 20 claims, some of these 20 claims depend on other claims such that there will actually still be 34 claims at issue. This remains far too many. Indeed, Plaintiff's narrowed list of claims does not appear to eliminate more than one or two of the many terms at issue for the claim construction hearing.

Given that Plaintiff's list does not sufficiently narrow the issues and that Plaintiff is suggesting a "second" trial, we again request that Plaintiff reduce its asserted claims to nine. If Plaintiff does not do so, we intend to raise this issue with the Court.

David