

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

BRIGHT RESPONSE, LLC  
F/K/A POLARIS IP, LLC

v.

GOOGLE INC., et al.

NO. 2:07-CV-371-TJW-CE

JURY TRIAL DEMANDED

**DEFENDANTS' PROPOSED VERDICT FORM**

This is the verdict form. It contains all of the questions set forth in the Jury Instructions. Once you have reached unanimous agreement on a verdict, the foreperson must fill in this verdict form, sign and date it, and advise the court that you have reached a verdict.

**QUESTION NO. 1.**

Has Bright Response proven, by a preponderance of the evidence, that Google's AdWords has directly infringed claims 28, 30, 31, 33 and 38 of U.S. Patent No. 6,411,947 ("the '947 patent")?

*"Yes" means the claim is infringed. "No" means the claim is not infringed.*

Answer "Yes" or "No" for each claim.

Claim 28: \_\_\_\_\_

Claim 30: \_\_\_\_\_

Claim 31: \_\_\_\_\_

Claim 33: \_\_\_\_\_

Claim 38: \_\_\_\_\_

**QUESTION NO. 2.**

Has Bright Response proven, by a preponderance of the evidence, that AOL's Search Marketplace has directly infringed claims 28, 30, 31, 33 and 38 of U.S. Patent No. 6,411,947 ("the '947 patent")?

*"Yes" means the claim is infringed. "No" means the claim is not infringed.*

Answer "Yes" or "No" for each claim.

Claim 28: \_\_\_\_\_

Claim 30: \_\_\_\_\_

Claim 31: \_\_\_\_\_

Claim 33: \_\_\_\_\_

Claim 38: \_\_\_\_\_

**QUESTION NO. 3.**

Has Bright Response proven, by a preponderance of the evidence, that Yahoo!’s Sponsored Search has directly infringed claims 28, 30, 31, 33 and 38 of U.S. Patent No. 6,411,947 (“the ‘947 patent”)?

*“Yes” means the claim is infringed. “No” means the claim is not infringed.*

Answer “Yes” or “No” for each claim.

Claim 28: \_\_\_\_\_

Claim 30: \_\_\_\_\_

Claim 31: \_\_\_\_\_

Claim 33: \_\_\_\_\_

Claim 38: \_\_\_\_\_

**QUESTION NO. 4.<sup>1</sup>**

Do you find that Google, AOL or Yahoo! has proven, by a preponderance of the evidence, that any of the following claims of the '947 patent are invalid for any of the following reasons?

*"Yes" means the claim is invalid.*

*"No" means the claim is not invalid.*

A. Because it is anticipated by the prior art?

Answer "Yes" or "No" for each claim.

Claim 28: \_\_\_\_\_

Claim 30: \_\_\_\_\_

Claim 31: \_\_\_\_\_

Claim 33: \_\_\_\_\_

Claim 38: \_\_\_\_\_

B. Because it is rendered obvious by the prior art?

Answer "Yes" or "No" for each claim.

Claim 28: \_\_\_\_\_

Claim 30: \_\_\_\_\_

Claim 31: \_\_\_\_\_

Claim 33: \_\_\_\_\_

Claim 38: \_\_\_\_\_

C. Because it is has inadequate written description?

Answer "Yes" or "No" for each claim.

Claim 28: \_\_\_\_\_

Claim 30: \_\_\_\_\_

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<sup>1</sup> Consistent with Microsoft Corporation's Petition for a Writ of Certiorari in *Microsoft Corp. v. Z4 Technologies, Inc.* and the Supreme Court decision in *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1745 (2007), Defendants submit that, when a defense of invalidity rests on documentary evidence that was not considered by the U.S. Patent and Trademark Office, the factual predicates of the defense should not need to be proven by clear and convincing evidence. To the extent that the Court rejects Defendants' position on this issue, Defendants have provided alternative language below.

Claim 31: \_\_\_\_\_  
Claim 33: \_\_\_\_\_  
Claim 38: \_\_\_\_\_

**QUESTION NO. 4. – Alternate Version**

Do you find that Google, AOL or Yahoo! has proven, by clear and convincing evidence, that any of the following claims of the '947 patent are invalid for the following reasons?

*“Yes” means the claim is invalid.*

*“No” means the claim is not invalid.*

A. Because it is anticipated by the prior art?

Answer “Yes” or “No” for each claim.

Claim 28: \_\_\_\_\_

Claim 30: \_\_\_\_\_

Claim 31: \_\_\_\_\_

Claim 33: \_\_\_\_\_

Claim 38: \_\_\_\_\_

B. Because it is rendered obvious by the prior art?

Answer “Yes” or “No” for each claim.

Claim 28: \_\_\_\_\_

Claim 30: \_\_\_\_\_

Claim 31: \_\_\_\_\_

Claim 33: \_\_\_\_\_

Claim 38: \_\_\_\_\_

C. Because it has inadequate written description?

Answer "Yes" or "No" for each claim.

Claim 28: \_\_\_\_\_

Claim 30: \_\_\_\_\_

Claim 31: \_\_\_\_\_

Claim 33: \_\_\_\_\_

Claim 38: \_\_\_\_\_

*If you have found any claim both infringed by Google and valid (i.e., you have answered “yes” to any of the claims in Question 1 and “no” to all sections of Question 4 for the corresponding claim), then answer Question No. 5. Otherwise, do not answer the following question.*

**QUESTION NO. 5.**

If you find any claim of the '947 patent to be both infringed by Google and valid, state the amount of damages, if any, either in the form of a lump sum amount or a running royalty that would fairly and reasonably compensate Bright Response for what it has proven by a preponderance of evidence against Google.

Lump sum amount, if any, against Google                   \$       \_\_\_\_\_

OR, IN THE ALTERNATIVE

Running royalty, if any, against Google

	\$	_____	Royalty Base
x (times)	%	_____	Royalty Rate
=	\$	_____	Damages against Google



*If you have found any claim both infringed by Yahoo! and valid (i.e., you have answered “yes” to any of the claims in Question 3 and “no” to all sections of Question 4 for the corresponding claim), then answer Question No. 7. Otherwise, do not answer the following question.*

**QUESTION NO. 7.**

If you find any claim of the '947 patent to be both infringed by Yahoo! and valid, state the amount of damages, if any, either in the form of a lump sum amount or a running royalty that would fairly and reasonably compensate Bright Response for what it has proven by a preponderance of evidence against Yahoo!.

Lump sum amount, if any, against Yahoo!                   \$       \_\_\_\_\_

**OR, IN THE ALTERNATIVE**

Running royalty, if any, against Yahoo!

	\$	_____	Royalty Base
x (times)	%	_____	Royalty Rate
=	\$	_____	Damages against Yahoo!

**QUESTION NO. 8.**

Did Bright Response delay filing suit for an unreasonable and inexcusable length of time from the time Bright Response knew or reasonably should have known of its claims against Google, AOL, and Yahoo!?

Yes: \_\_\_\_\_

No: \_\_\_\_\_

**QUESTION NO. 9.**

Did Bright Response's delay in filing suit prejudice or injure Google, AOL, and Yahoo!?

Yes: \_\_\_\_\_

No: \_\_\_\_\_

Signed this \_\_\_\_\_ day of August, 2010.

\_\_\_\_\_  
JURY FOREPERSON