

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

PERFORMANCE PRICING, INC.,

Plaintiff,

v.

GOOGLE INC., AOL LLC, MICROSOFT
CORPORATION, YAHOO! INC.,
IAC SEARCH & MEDIA, INC., and
A9.COM, INC.,

Defendants.

Case No. 2:07-cv-432 (LED/JDL)

JURY TRIAL DEMANDED

**First Amended Disclosure of Asserted Claims and Infringement Contentions
under Patent Rule 3-1**

Pursuant to Patent Rule 3-1, Plaintiff Performance Pricing, Inc. submits the following First Amended Disclosure of Asserted Claims and Infringement Contentions.

This disclosure is based on the information available to Performance Pricing as of the date of this disclosure, and Performance Pricing reserves the right to amend this disclosure to the full extent consistent with the Court's Rules and Orders.

I. Patent Rule 3-1(a): Asserted Claims

Plaintiff Performance Pricing asserts that Defendants Google, Inc., AOL LLC, Microsoft Corporation, Yahoo! Inc., IAC Search & Media, Inc. and A9.com, Inc. infringe the following claims of United States Patent No. 6,978,253, entitled "Systems and Methods for Transacting Business Over a Global Communications Network Such as the Internet": Claim 1, Claim 2, Claim 9, Claim 10, Claim 11, Claim 12, Claim 13, Claim 14, Claim 15, Claim 18, Claim 20, Claim 21, Claim 22, Claim 23, Claim 30.

II. Patent Rule 3-1(b): Accused Instrumentalities

Plaintiff Performance Pricing asserts that the Asserted Claims are infringed by:

- The Google AdWords System
- The AOL Search Marketplace System
- The Microsoft adCenter System
- IAC's Ask Sponsored Listing System
- A9.com's Clickriver System
- Yahoo!'s Sponsored Search and/or Search Marketing System

III. Patent Rule 3-1(c): Claim Charts

Plaintiff Performance Pricing's analysis of Defendants' systems is based upon information made publicly available by Defendants and from Plaintiff's own investigation.

Consistent with Patent Rule 3-6, Plaintiff reserves the right to amend or supplement this disclosure for any of the following reasons, or as ordered by the Court:

- (i) Plaintiff's positions on infringement of specific claims will depend on the claim construction adopted by the Court. Because said construction has not yet occurred, Plaintiff cannot take a final position on the bases for infringement of the Asserted Claim; and
- (ii) Plaintiff's investigation and analysis of Defendants' products and services is based upon information made publicly available by Defendants and Plaintiff's own investigations. Plaintiff reserves the right to seek leave of court to amend these contentions based upon discovery of additional information.

Attached hereto as Exhibit A, and incorporated herein in its entirety, is a chart identifying where each element is considered to indicate that each claim element is found within each of the above-described Accused Instrumentalities.

IV. Patent Rule 3-1(d): Literal Infringement / Doctrine of Equivalents

With respect to the patent at issue, each element of each Asserted Claim is considered to be literally present in the Accused Instrumentalities, or, in the alternative, present under the doctrine of equivalents. Consistent with Patent Rule 3-6, Plaintiff reserves the right to amend or supplement this disclosure for any of the following reasons, or as ordered by the Court:

- (i) Plaintiff's positions on infringement of specific claims will depend on the claim construction adopted by the Court. Because said construction has not yet occurred, Plaintiff cannot take a final position on the bases for infringement of the Asserted Claims; and
- (ii) Plaintiff's investigation and analysis of Defendants' products and services is based upon information made publicly available by Defendants' and Plaintiff's own investigations. Plaintiff reserves the right to seek leave of court to amend these contentions based upon discovery of additional information.

V. Patent Rule 3-1(e): Priority Dates

June 29, 1999.

VI. Patent Rule 3-1(f): Identification of Instrumentalities Practicing the Claimed Invention

N/A

Dated: June 5, 2008

Respectfully submitted,

By: /s/ N. Claire Abernathy

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that counsel of record are being served this 5th day of June, 2008, with a copy of this document via electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ N. Claire Abernathy
N. Claire Abernathy