

Appendix A

The following analysis is based on information known to date. Plaintiff reserves the right to amend and update this analysis as additional information is obtained and analyzed.

Google

Claim language	Google
Claim 1	
(Preamble) “A method of doing business over a global communications network comprising the steps:”	<p><u>Defendants’ statements and depictions include:</u></p> <ul style="list-style-type: none"> • For a general description of Google’s method of doing business. See GO 1-GO 380. • Google sells online advertising space to advertisers. <ul style="list-style-type: none"> ○ “Advertising Programs: <ul style="list-style-type: none"> ▪ For Advertisers: Google AdWords ▪ Advertise to people searching on Google and our advertising network ▪ Reach people actively looking for information about your products and services online ▪ Easily control costs – pay only when people click on your ad” GO 2. ○ “What is Google Adwords? Google AdWords is a quick and simple way to advertise on Google, regardless of your budget. AdWords ads are displayed along with search results on Google, as well as on search and content sites in the growing Google Network, including AOL, EarthLink, HowStuffWorks, & Blogger. With searches on Google and page views on the Google Network each day, your Google AdWords ads reach a vast audience.” GO-20 ○ “Get new customers with Google. No matter what size business you run, you can display your ads on Google and our advertising network. Pay only if people click

your ads.” GO-3

- Google describes the product, internet advertisement space, over the internet. See Claim 1, element (a).
- To participate in AdWords, the buyer inputs the maximum cost per click (CPC). Google accepts the buyer’s maximum CPC over the internet. See Claim 1, element b.
- Google accepts payment information over the internet. See Claim 2.
- The buyer agrees to Google AdWord’s terms and conditions over the internet. See Claim 1, element (c).
- The buyer signs up with Google AdWords over the internet. See Claim 1, element (c).
- The Google AdWords system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c).
- Google provides the buyer with tutorials and FAQs about its system over the internet. See generally GO 1-GO 380.

Analysis:

- A “Global Communication Network” includes a network that connects computers around the world. The internet is a global communication network because it connects and allows communications between computers and computers networks around the world. See also Claim 14, which states that the internet is a global communications network.
- A “business” is the purchase and sale of goods in an attempt to make a profit. Selling internet advertising space to advertisers to make a profit is a business. Google uses the Google AdWords system to sell internet advertising space over the internet. Thus, the Google AdWords system is a method of doing business over a global communications system. Google

	<p>conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its terms and services over the internet, accepting payment over the internet, accepting maximum CPCs from the buyer over the internet, accepting keyword selections over the internet, and providing tutorials and FAQs over the internet.</p> <p><u>Conclusion</u></p> <ul style="list-style-type: none"> • Thus, the Google AdWords system is a method of doing business over a global communications network.
<p>(a) “communicating to a buyer via the global communications network, a description of the product”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Google describes its internet advertisement space over the internet. <ul style="list-style-type: none"> ○ “Advertising Programs: <ul style="list-style-type: none"> ▪ For Advertisers: Google AdWords ▪ Advertise to people searching on Google and our advertising network ▪ Reach people actively looking for information about your products and services online ▪ Easily control costs – pay only when people click on your ad.” GO 2 ○ “What is Google Adwords? Google AdWords is a quick and simple way to advertise on Google, regardless of your budget. AdWords ads are displayed along with search results on Google, as well as on search and content sites in the growing Google Network, including AOL, EarthLink, HowStuffWorks, & Blogger. With searches on Google and page views on the Google Network each day, your Google AdWords ads reach a vast audience.” GO-20 • Images describing the product are also shown on the Google AdWord’s web pages. GO-2, GO-239, GO-245

- “Get new customers with Google. No matter what size business you run, you can display your ads on Google and our advertising network.” GO-3
- “Google AdWords is Google’s advertising program. AdWords lets you create simple, effective ads and display them to people already searching online for information related to your business.” GO-247
- Google provides additional examples of Adwords ads and formats on its web pages. GO-243-245, 247

Analysis:

- This element involves (1) communicating to a buyer a description of the product, a (2) via the global communications network

Communicating to a buyer a description of a product

- An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product.
- The communications contained in Google’s web pages, described above, contain text and picture representations of internet advertising space. These communications are intended for the advertiser (see GO-2 “For advertisers”), who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement spaces.

Via the global communications system

- The internet is a global communications network. See Claim 1, preamble. The Google Adwords system shows its web pages over the internet. The web pages that are shown over the internet include those that contain text and pictorial descriptions of the Adwords system and the internet advertising space that Google offers.

Conclusion:

	<ul style="list-style-type: none"> • Therefore, the Google system involves communicating to the buyer a description of the product via the global communication network.
<p>(b) “accepting a first request from the buyer to buy the product for a price to be determined within a price range;”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in AdWords, the buyer inputs the maximum CPC over the internet. Google accepts the buyer’s maximum CPC over the internet. <ul style="list-style-type: none"> ○ “How do I create an AdWords account?”GO-373-375. The web page lists the following steps, which include choosing a maximum CPC: <ul style="list-style-type: none"> • Target & Create Ad • Choose Keywords • Choose Daily Budget • Choose Maximum Cost-Per-Click (CPC) • Review Your Selections • Sign Up • Activate Your Account • Google assigns a minimum cost per click that depends on the buyer’s keyword quality. <ul style="list-style-type: none"> ○ “Minimum cost per click (CPC): \$0.01 and up, depending on keyword quality.” GO 9. ○ “Minimum CPC bid: A minimum cost-per-click (CPC) bid is assigned to each keyword in your account based on its quality (or Quality Score). The minimum bid is usually the least amount that you can pay per click in order for your keyword to show ads.” GO-119 • The buyer’s actual cost falls between the maximum CPC and the minimum CPC. “Actual cost-per-click (CPC) This is the amount you’ll actually pay for a click on your ad. . . Your actual CPC will be equal or less than the CPC bid you specify

for your ad group or keyword.” GO-67.

- “Maximum CPC – amount that you are willing to pay for a click on your ad” GO-324.
- “Google never charges more than this amount per click” GO-324.
- “Set your budget . . . You specify how much you're willing to pay per click or per impression.” GO-58

Analysis:

- This element involves (1) accepting a “request from the buyer to buy the product”, where (2) the price is “to be determined within a price range”. We consider these in reverse order.

The price of the product is “to be determined within a price range.”

- An internet advertising space is a product, as discussed in Claim 1, element a. Under the Google AdWords system, the price falls within a price range between the maximum cost per click and the minimum cost per click. As described above, Google accepts a maximum cost per click, which is a price that is input by the buyer. Google assigns a minimum cost per click that depends on the buyer’s keyword quality. The buyer’s actual cost falls between the maximum CPC and the minimum CPC. Thus, the price of the product is to be determined within a price range.

Google’s system “accepts a request from the buyer to buy the product for a price”

- Accepting something that the buyer asks for is accepting a “request from the buyer” since a “request” is something asked for. The buyer’s maximum CPC is a request from the buyer to buy the product at a price to be determined within a price range, since Google’s web pages state that the price of the internet advertisement space will fall between the minimum and maximum CPC. When the buyer inputs a maximum CPC,

	<p>the buyer is aware that Google will determine the price between the minimum CPC and the maximum CPC.</p> <ul style="list-style-type: none"> • Google accepts the request (if it is in the proper form), and, by doing so, allows that bid to participate in the continuing auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Google system accepts a request from the buyer to buy the product for a price to be determined within a price range.
<p>(c) “accepting a second request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA);”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer agrees to Google AdWord’s terms and conditions. The terms and conditions state that the buyer “shall pay all charges in accordance with the payment terms in the applicable IO or Program FAQ.” <ul style="list-style-type: none"> ○ “These Terms govern Customer's participation in Google's advertising program(s) ("Program") and, as applicable, any insertion orders or service agreements ("IO") executed by and between the parties and/or Customer's online management of any advertising campaigns. These Terms and any applicable IO are collectively referred to as the "Agreement." Google and Customer hereby agree and acknowledge: . . . Unless agreed to by the parties in writing, Customer shall pay all charges in accordance with the payment terms in the applicable IO or Program FAQ.” Google Adwords terms & conditions for USA. GO-376-380 • To participate in AdWords, the buyer signs up with Google AdWords over the internet. <ul style="list-style-type: none"> ○ “How do I create an AdWords account?” GO-373-375 <ul style="list-style-type: none"> ▪ The web page lists the following steps, which include “sign up”:

	<ul style="list-style-type: none">• Target & Create Ad• Choose Keywords• Choose Daily Budget• Choose Maximum Cost-Per-Click (CPC)• Review Your Selections• Sign Up• Activate Your Account <ul style="list-style-type: none">• To participate in AdWords, the buyer activates the AdWords account.<ul style="list-style-type: none">○ “How do I create an AdWords account?” GO-373-375. The web page lists the following steps, which include “Activate Your Account”:<ul style="list-style-type: none">• Target & Create Ad• Choose Keywords• Choose Daily Budget• Choose Maximum Cost-Per-Click (CPC)• Review Your Selections• Sign Up• Activate Your Account○ “Activating Your Account”<ul style="list-style-type: none">▪ After you sign up for an account, Google sends you an email asking you to verify your account. Your account won't be activated — and your ads won't run — until you verify your information and set up billing. Here's how:<ul style="list-style-type: none">▪ Check your email account that you provided during signup. Open the verification email from AdWords, and click the link to visit the AdWords login page.▪ Sign in to your AdWords account using the
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	<p>email and password you provided during signup.</p> <ul style="list-style-type: none">▪ Click the link in the red box at the top of your account page asking you to submit your billing information.▪ Select a billing address and time zone for your account. The time zone determines the official "working day" for all billing, reporting, and statistics in your account. Choose your time zone carefully; once selected, it can't be reset.▪ Choose your payment option. The payment options available depend on your billing currency and location. Review our payment options page for more information. If you choose to pay by direct debit or credit card (recommended), your ads will run soon after you submit your billing information. If you opt for bank transfer, your ads will run after we receive your first payment (typically 10 working days after you initiate the transfer).▪ Complete the activation process by agreeing to the AdWords terms and conditions and clicking "Save and Activate on the last page." GO-368 <ul style="list-style-type: none">• To participate in AdWords, the buyer chooses the keyword and creates the ad. The Google AdWords system collects data from the buyer including the keyword and ad text over the internet.<ul style="list-style-type: none">○ "How do I create an AdWords account?" GO-373-375. The web page lists the following steps, which include targeting and creating an ad, and choosing keywords:<ul style="list-style-type: none">▪ Target & Create Ad▪ Choose Keywords▪ Choose Daily Budget
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	<ul style="list-style-type: none">▪ Choose Maximum Cost-Per-Click (CPC)▪ Review Your Selections▪ Sign Up▪ Activate Your Account <ul style="list-style-type: none">• Google calculates a Quality Score. The quality score for the ad ranking is based on the keyword’s clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. This information is found in the Google FAQ/Help Center.<ul style="list-style-type: none">○ “The Quality Score for ad rank on the search network is determined by:<ul style="list-style-type: none">▪ The keyword’s clickthrough rate (CTR) on Google; CTR on the Google Network is not considered▪ The relevance of the keyword and ad to the search query▪ Other relevance factors▪ Your landing page quality is not a factor.” GO-21▪ The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price.○ “The Quality Score for ad rank on the search network is determined by:<ul style="list-style-type: none">▪ The keyword’s clickthrough rate (CTR) on Google; CTR on the Google Network is not considered▪ The relevance of the keyword and ad to the search query▪ Other relevance factors
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	<ul style="list-style-type: none">▪ Your landing page quality is not a factor.” GO-21○ “What is the Quality Score column?<ul style="list-style-type: none">▪ The Quality Score column displays your keyword's Quality Score to help you monitor your keyword relevance. This column is a customizable column visible via the 'Keywords' tab of your Ad Group Details page. It's disabled by default for new accounts and can be enabled at any time.▪ Keywords can have one of the following three Quality Score states:<ul style="list-style-type: none">▪ Great: The keyword is very relevant and may have a high clickthrough rate (CTR), relevant ad text, and a unique, relevant landing page. The minimum cost-per-click (CPC) bid for this keyword may be low. If you'd like to lower your costs further, you can optimize this keyword's ad group by using more targeted ad text or improving your landing page content. Otherwise, this keyword is very relevant and effective for your ad campaign.▪ OK: The keyword may not be as relevant as it could be. It may have a mid-range minimum CPC bid, and while the keyword may not be very costly or extremely general, we still recommend optimization for the ad group. Optimization can lower your overall costs, draw more clicks to your ads, and result in a better return on your investment (ROI). To optimize, try using more targeted ad text and keywords or
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	<p>improving your landing page content.</p> <ul style="list-style-type: none"> ▪ Poor: The keyword isn't very relevant to users, and as a result may have a very high minimum CPC bid. We recommend that you remove this keyword and replace it with a more specific keyword. If you'd like to keep advertising with this keyword, you can optimize instead. To do this, try lowering the minimum CPC bid, writing a more targeted, relevant ad, or improving your landing page content. GO-142 ○ “The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would case the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B’s rank number (.65) by A’s Quality Score (1.8). The result is the CPC that would cause advertiser A’s ad top appear in advertiser B’s position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents.” GO-279-280 • Rank number is determined by maximum cost per click and Quality Score. <ul style="list-style-type: none"> ○ “Google calculates a rank number by multiplying the CPC bid by the Quality Score.” GO-279 ○ “Rank number determined by: maximum cost-per-click (CPC), or maximum cost-per-impression (CPM), and Quality Score” GO 290. • The buyer’s actual cost per click depends on the buyer’s Quality Score. This is because Buyer 1’s CPC = (Rank of the person below Buyer 1) / (Buyer 1’s Quality Score). Thus, the
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buyer's Quality Score is inversely related to the Quality Score; as Quality Score increases, CPC decreases, and vice versa.

- “In this example, you will see how the rank number, position and actual cost-per-click charges are calculated. Here are three advertisers running ads on the same keywords. Each advertiser has a different cost per click bid, and Quality Score. Google calculates a rank number by multiplying the CPC bid by the Quality Score. Advertiser A has the highest rank number, .72. This means they get position number 1. Next, Google calculates how much to charge each advertiser for a click. The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would cause the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B's rank number (.65) by A's Quality Score (1.8). The result is the CPC that would cause advertiser A's ad to appear in advertiser B's position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents. For advertiser B, Google divides advertiser C's rank number (.38) by B's Quality Score (1) which equals 38 cents – the amount that would cause advertiser B's ad to appear in advertiser C's position. To appear above that position, Google adds \$.01 to this amount. This yields 39 cents.”
GO-279-280; See also GO-283

- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's$

Quality Score). As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases.

- "In this example, you will see how the rank number, position and actual cost-per-click charges are calculated. Here are three advertisers running ads on the same keywords. Each advertiser has a different cost per click bid, and Quality Score. Google calculates a rank number by multiplying the CPC bid by the Quality Score. Advertiser A has the highest rank number, .72. This means they get position number 1. Next, Google calculates how much to charge each advertiser for a click. The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would cause the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B's rank number (.65) by A's Quality Score (1.8). The result is the CPC that would cause advertiser A's ad to appear in advertiser B's position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents. For advertiser B, Google divides advertiser C's rank number (.38) by B's Quality Score (1) which equals 38 cents – the amount that would cause advertiser B's ad to appear in advertiser C's position. To appear above that position, Google adds \$.01 to this amount. This yields 39 cents."
- GO-279-280

- Google accepts the buyer's agreement to Google's terms and

conditions, as well as the sign up and activation of the account. After the buyer agrees to Google's terms and conditions, signs up, and activates the account (among other things), Google begins running the ads on the Google network.

- "You may be just minutes away from running ads and reaching users on Google and our growing network of search and content sites and products in the Google Network. . . To create and AdWords Standard Edition account, and to price your keywords, please follow the steps below."
- The web page lists signing up and activating the account as two steps. GO-373-375
- Activation, in turn, involves accepting Google's terms and conditions.
 - "Complete the activation process by agreeing to the AdWords terms and conditions and clicking Save and Activate on the last page." GO-368

Analysis:

- This element involves (1) accepting a "request from the buyer" to allow (2) "the price to be determined based upon a performance of the buyer while participating in a price determining activity." We consider these in reverse order.

price to be determined based upon a performance of the buyer while participating in a price determining activity

- The competitive submission of keywords and ad text is an "activity."
- The buyer's price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text. Google's web pages state that the buyer's actual cost per click depends on the buyer's Quality Score, which depends on the buyer's performance: the

	<p>relevance of the submitted keywords and ad text. In addition, the buyer’s comparative performance on keyword and ad text submission determines price. As the rank of the next-best competitor increases, the buyer’s actual cost per click increases. As the rank of the next-best competitor decreases, the buyer’s actual cost per click decreases. Therefore, the price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text.</p> <ul style="list-style-type: none">• The buyer’s actual cost per click is directly related to the buyer’s performance while participating in the competitive submission of keywords and ad text, as discussed above. Thus, the price is determined based upon the performance of the buyer while participating in a price determining activity. <p><i>accepting a second request from the buyer</i></p> <ul style="list-style-type: none">• The buyer’s agreement to Google’s terms and conditions is a request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. This is because the terms and conditions state that the buyer “shall pay all charges in accordance with the payment terms in the applicable IO or Program FAQ.” The Program FAQ shows that the buyer’s actual cost per click is related to the buyer’s Quality Score, which depends on the relevance of the submitted keywords and text. In addition, Google’s web pages show that the buyer’s comparative performance on keyword and ad text submission also determines price. By agreeing to Google’s Terms and Conditions, the buyer requests that Google allow the price to be determined based on the performance of the buyer while performing keyword selection and ad creation, as outlined in Google’s Program FAQ.
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	<ul style="list-style-type: none"> • In the alternative, the buyer’s act of signing up, and/or activating the account is the request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. The Program FAQ and Google’s help pages states that the buyer’s actual cost per click is related to the buyer’s Quality Score, which depends on the relevance of the submitted keywords and ad text. In addition, the FAQ and help pages indicate that the buyer’s comparative performance on keyword and ad text submission also determines price. Thus, the act of signing up, and/or activating the account is a request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. • Google accepts the buyer’s agreement to Google’s terms and conditions, as well as the sign up and activation of the account. After the buyer agrees to Google’s terms and conditions, signs up, and activates the account (among other things), Google begins running the ads on the Google network. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Therefore, the Google AdWords system accepts a second request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA).
<p>(d) “receiving data from the buyer over the global communications network, said data representing the performance of the buyer during the</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Google AdWords system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • Google calculates a Quality Score. The quality score for the ad ranking is based on the keyword’s clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. This information is found in the

<p>PDA;”</p>	<p>Google FAQ/Help Center. See Claim 1, element (c), Defendants’ Statements and Depictions.</p> <ul style="list-style-type: none"> • The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score. See Claim 1 element (c), Defendants’ Statements and Depictions. • Rank number is determined by maximum cost per click and Quality Score. See Claim 1 element (c), Defendants’ Statements and Depictions. • The buyer’s actual cost per click depends on the buyer’s Quality Score. This is because Buyer 1’s $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1’s Quality Score})$. Thus, the buyer’s Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa. See Claim 1 element (c), Defendants’ Statements and Depictions. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because Buyer 1’s $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1’s Quality Score})$. As the rank of the next-best competitor increases, the buyer’s actual cost per click increases. As the rank of the next-best competitor decreases, the buyer’s actual cost per click decreases. See Claim 1 element (c), Defendants’ Statements and Depictions. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • As discussed above, the performance of the buyer during the PDA is the buyer’s selection of advertising text and associated keywords. Data representing the buyer’s performance consists of the text and associated keywords that result from that selection. This data is received by Google from the buyer over the internet, which is a global communications network. See
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	<p>analysis for Claim 1, preamble.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • The Google AdWords system involves receiving data from the buyer over the global communications network that represents the buyer's PDA performance.
<p>(e) “and determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer”</p>	<p><u>Defendant's Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Google AdWords system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • Google calculates a Quality Score. The quality score for the ad ranking is based on the keyword's clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. This information is found in the Google FAQ/Help Center. See Claim 1, element (c), Defendants' Statements and Depictions. • The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. See Claim 1 element (c), Defendants' Statements and Depictions. • Rank number is determined by maximum cost per click and Quality Score. See Claim 1 element (c), Defendants' Statements and Depictions. • The buyer's actual cost per click depends on the buyer's Quality Score. This is because Buyer 1's CPC = (Rank of the person below Buyer 1) / (Buyer 1's Quality Score). Thus, the buyer's Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa. See Claim 1 element (c), Defendants' Statements and Depictions. • The buyer's actual cost per click is directly related to the

buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases. See Claim 1 element (c), Defendants' Statements and Depictions.

- To participate in AdWords, the buyer inputs the maximum CPC over the internet. See Claim 1, element (b).
- Google assigns a minimum cost per click that depends on the buyer's keyword quality. See Claim 1, element (b).
- The buyer's actual cost falls between the maximum CPC and the minimum CPC. See Claim 1, element (b).

Analysis:

- This element involves (1) determining the price of the product based at least partially upon the data received, (2) said price being within the range and scaled to the performance of the buyer.

Determining the price of the product based at least partially upon the data received

- The data received is the keyword selection and ad text, which the Google AdWords system receives from the buyer over the internet.
- Determining the price of the product at least partially on the keyword selection and ad text is determining the product based at least partially upon the data received.
- Google determines the price of the product at least partially on the keyword selection and ad text.
- The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher

Quality Score, resulting in a lower price. The buyer's actual cost per click depends on the buyer's Quality Score. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. Thus, the buyer's Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa.

- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases.
- Thus, Google determines the price of the product at least partially on the data received, the keyword selection and the ad text.

Said price being within the price range and scaled to the performance of the buyer

- Under the Google AdWords system, the price falls within a price range between the maximum cost per click and the minimum cost per click. As described above, Google accepts a maximum cost per click, which is a price that is input by the buyer. Google assigns a minimum cost per click that depends on the buyer's keyword quality. The buyer's actual cost falls between the maximum CPC and the minimum CPC. Thus, the price is to be determined within a price range.
- A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer. Under the Google AdWords system, the price is relative or proportionate to the performance of the buyer in the competitive submission of ad text and keyword selection. This

	<p>is because the Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. The buyer's actual cost per click depends on the buyer's Quality Score. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. Thus, the buyer's Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa.</p> <ul style="list-style-type: none"> • The buyer's actual cost per click is also directly related to the buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases. • Thus, the price is within the price range and scaled to the performance of the buyer. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Google AdWords system involves determining the price of the product based at least partially upon the data received, said price being within the range and scaled to the performance of the buyer.
Claim 2	
(pre) the method of claim 1, further comprising the step of	<p><u>Defendant's Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant's Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) accepting payment	<p><u>Defendant's Statements & Depictions:</u></p>

<p>information from the buyer over the global communications network</p>	<ul style="list-style-type: none"> • Google collects payment information including currency, billing address, and credit card information over the internet. See GO-9. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves accepting payment information from the buyer over the global communications network. • Currency, billing address, and credit card information is payment information. The Google system accepts payment information including currency, billing address, and credit card information over the internet. The internet is a global communications network. See Claim 1, preamble. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 9	
<p>(pre) The method of claim 1,</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) wherein the PDA requires participation of at least one participant in addition to the buyer.</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Google AdWords system involves more than one buyer. <ul style="list-style-type: none"> ○ “In this example, you will see how the rank number, position and actual cost-per-click charges are calculated. Here are three advertisers running ads on the same keywords. Each advertiser has a different cost per click bid, and Quality Score. Google calculates a rank number by multiplying the CPC bid by the Quality Score. Advertiser A has the highest rank number, .72. This means they get position number 1. Next, Google

calculates how much to charge each advertiser for a click. The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would cause the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B's rank number (.65) by A's Quality Score (1.8). The result is the CPC that would cause advertiser A's ad to appear in advertiser B's position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents. For advertiser B, Google divides advertiser C's rank number (.38) by B's Quality Score (1) which equals 38 cents – the amount that would cause advertiser B's ad to appear in advertiser C's position. To appear above that position, Google adds \$.01 to this amount. This yields 39 cents.”
GO-279-280

- In order to determine the price, Google compares the rank number of more than one buyer.
 - “In this example, you will see how the rank number, position and actual cost-per-click charges are calculated. Here are three advertisers running ads on the same keywords. Each advertiser has a different cost per click bid, and Quality Score. Google calculates a rank number by multiplying the CPC bid by the Quality Score. Advertiser A has the highest rank number, .72. This means they get position number 1. Next, Google calculates how much to charge each advertiser for a click. The cost-per-click is the minimum amount needed to maintain a rank number higher than the next

lower ad. This is one cent more than the amount that would result in a rank number that would cause the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B's rank number (.65) by A's Quality Score (1.8). The result is the CPC that would cause advertiser A's ad to appear in advertiser B's position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents. For advertiser B, Google divides advertiser C's rank number (.38) by B's Quality Score (1) which equals 38 cents – the amount that would cause advertiser B's ad to appear in advertiser C's position. To appear above that position, Google adds \$.01 to this amount. This yields 39 cents.”
GO-278-280; GO-283

- “In this example, you will see how the rank number, position and actual cost-per-click charges are calculated. Here are three advertisers running ads on the same keywords. Each advertiser has a different cost per click bid, and Quality Score. Google calculates a rank number by multiplying the CPC bid by the Quality Score. Advertiser A has the highest rank number, .72. This means they get position number 1. Next, Google calculates how much to charge each advertiser for a click. The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would cause the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B's rank number (.65) by A's Quality Score (1.8). The result is the CPC that would

cause advertiser A's ad top appear in advertiser B's position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents. For advertiser B, Google divides advertiser C's rank number (.38) by B's Quality Score (1) which equals 38 cents – the amount that would cause advertiser B's ad to appear in advertiser C's position. To appear above that position, Google adds \$.01 to this amount. This yields 39 cents.”
GO-278-280

- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases. See Claim 1, element c.

Analysis:

- This claim involves a further step of wherein the PDA requires the participation of at least one participant in addition to the buyer.
- The Google system involves more than one buyer. The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The PDA requires the participation of at least one participant in addition to the buyer, because the buyer's comparative performance on keyword and ad text submission determines price. Google's web pages show that the cost per click is determined by comparing the rank of more than one participant. In order for Google to compare the performance, at least one participant in addition to the buyer is required.

	<p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the PDA in this instance, the competitive submission of keywords and ad text, requires the participation of more than one buyer.
Claim 10	
(pre) “The method as in claim 9, further comprising”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 9. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 9. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “the step of determining the price based at least partially upon a competition between the buyer and at least one participant using the PDA.”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Google AdWords system involves more than one buyer. See Claim 9, element a. • To participate in AdWords, the buyer chooses the keyword and creates the ad. See Claim 1, element c. • Google calculates a Quality Score. The quality score for the ad ranking is based on the keyword’s clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. See Claim 1, element c. • The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. See Claim 1, element c. • Rank number is determined by maximum cost per click and Quality Score. See Claim 1, element c. • In order to determine the price, Google compares the rank number of more than one buyer. See Claim 9, element a. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because Buyer 1’s

	<p>CPC = (Rank of the person below Buyer 1) / (Buyer 1's Quality Score). As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases. See Claim 1, element c.</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element requires the step of determining the price based at least partially upon a competition between the buyer and at least one participant using the PDA. • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. This is because the buyer's comparative performance on keyword and ad text submission determines price. Google's web pages show that the cost per click is determined by comparing the rank of more than one participant. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases. Therefore, the price is determined based at least partially upon a competition between the buyer and at least one participant using the PDA. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 11	
(pre) "The method as in claim 10, wherein the at least one participant is a second buyer, and further	<p><u>Defendant's Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant's Statements and Depictions in Claim 10. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 10. <p><u>Conclusion:</u></p>

<p>comprising the steps of’</p>	<ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “accepting a second request from the second buyer to buy the product for a second price to be determined within the price range, and”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • There is more than one buyer in a Google AdWords auction. See GO 279, 283 <ul style="list-style-type: none"> ○ “In this example, you will see how the rank number, position and actual cost-per-click charges are calculated. Here are three advertisers running ads on the same keywords. Each advertiser has a different cost per click bid, and Quality Score. Google calculates a rank number by multiplying the CPC bid by the Quality Score. Advertiser A has the highest rank number, .72. This means they get position number 1. Next, Google calculates how much to charge each advertiser for a click. The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would case the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B’s rank number (.65) by A’s Quality Score (1.8). The result is the CPC that would cause advertiser A’s ad top appear in advertiser B’s position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents. For advertiser B, Google divides advertiser C’s rank number (.38) by B’s Quality Score (1) which equals 38 cents – the amount that would cause advertiser B’s ad to appear in advertiser C’s position. To appear above that position, Google adds \$.01 to this amount. This yields 39 cents.” GO-256-259

	<ul style="list-style-type: none"> • To participate in AdWords, each buyer inputs the maximum CPC. See Claim 1, element b. <ul style="list-style-type: none"> ○ “How do I create an AdWords account?” GO-373-375 <ul style="list-style-type: none"> ▪ The web page lists the following steps, which include choosing a maximum CPC: <ul style="list-style-type: none"> • Target & Create Ad • Choose Keywords • Choose Daily Budget • Choose Maximum Cost-Per-Click (CPC) • Review Your Selections • Sign Up • Activate Your Account • Google assigns a minimum cost per click that depends on the buyer’s keyword quality. See Claim 1, element b. • Each buyer’s actual cost falls between the maximum CPC and the minimum CPC. See Claim 1, element b. <ul style="list-style-type: none"> ○ “Actual cost-per-click (CPC) This is the amount you’ll actually pay for a click on your ad. . . Your actual CPC will be equal or less than the CPC bid you specify for your ad group or keyword.” GO-67 ○ “Maximum CPC – amount that you are willing to pay for a click on your ad” GO-324 ○ “Google never charges more than this amount per click” GO-324 ○ “Set your budget . . . You specify how much you're willing to pay per click or per impression.” GO-58 <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element requires accepting a second request from a second buyer for a second price to be determined within the price range.
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Second buyer

- There is more than one buyer in the Google AdWords. Since there is more than one buyer, there is a second buyer.

accepting a second request from the second buyer to buy the product for a second price to be determined within the price range

- To participate in AdWords, each buyer inputs a maximum CPC. Thus, the second buyer inputs a second maximum CPC. Under the Google AdWords system, each buyer's price falls within a price range between that buyer's maximum cost per click and minimum cost per click. The second buyer's actual cost falls between the second buyer's maximum CPC and the minimum CPC. Thus, the second buyer's price is to be determined within a price range between the second buyer's maximum cost per click and minimum cost per click.
- Accepting something that the second buyer asks for is accepting a second request from the second buyer since a "request" is something asked for. The second buyer's maximum CPC is a request from the second buyer to buy the product at a price to be determined within a price range, since Google's web pages state that the price will fall between the second buyer's minimum and maximum CPC. When the second buyer inputs a maximum CPC, the second buyer is aware that Google will determine the price between the minimum CPC and the maximum CPC. Google accepts the second buyer's request (if it is in the proper form), and, by doing so, allows that bid to participate in the continuing auction.
- Thus, the Google system accepts a second request from the second buyer to buy the product for a second price to be determined within the price range.

Conclusion:

	<ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(b) “determining said second price based at least partially upon the competition.”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Google system involves more than one buyer. See Claim 9, element a. • To participate in AdWords, each buyer chooses the keyword and creates the ad. See Claim 1, element c. <ul style="list-style-type: none"> ○ “How do I create an AdWords account?” GO-373-375. The web page lists the following steps, which include “sign up”: <ul style="list-style-type: none"> ▪ Target & Create Ad ▪ Choose Keywords ▪ Choose Daily Budget ▪ Choose Maximum Cost-Per-Click (CPC) ▪ Review Your Selections ▪ Sign Up ▪ Activate Your Account • Google calculates a Quality Score. The quality score for the ad ranking is based on the keyword’s clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. See Claim 1, element c. • The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. See Claim 1, element c. • Rank number is determined by maximum cost per click and Quality Score. See Claim 1, element c. • In order to determine the price, Google compares the rank number of more than one buyer. See Claim 9, element a. • Each buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because Buyer 1’s

$CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases. See Claim 1, element c.

- “In this example, you will see how the rank number, position and actual cost-per-click charges are calculated. Here are three advertisers running ads on the same keywords. Each advertiser has a different cost per click bid, and Quality Score. Google calculates a rank number by multiplying the CPC bid by the Quality Score. Advertiser A has the highest rank number, .72. This means they get position number 1. Next, Google calculates how much to charge each advertiser for a click. The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would cause the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B's rank number (.65) by A's Quality Score (1.8). The result is the CPC that would cause advertiser A's ad to appear in advertiser B's position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents. For advertiser B, Google divides advertiser C's rank number (.38) by B's Quality Score (1) which equals 38 cents – the amount that would cause advertiser B's ad to appear in advertiser C's position. To appear above that position, Google adds \$.01 to this amount. This yields 39 cents.”

GO-278-280

	<p><u>Analysis:</u></p> <p>This element requires the step of determining the second price based at least partially upon the competition.</p> <ul style="list-style-type: none"> • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. • The Google system involves more than one buyer. Each buyer’s price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. This is because the buyer’s comparative performance on keyword and ad text submission determines price. Google’s web pages show that the cost per click is determined by comparing the rank of more than one participant. As the rank of the next-best competitor increases, the buyer’s actual cost per click increases. As the rank of the next-best competitor decreases, the buyer’s actual cost per click decreases. Since each buyer’s price is based on the competition, the second buyer’s price is based at least partially upon the competition as well. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 12	
(pre) “The method of claim 1,”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the steps of accepting the first request from the buyer,	<p><u>Defendant’s Depictions and Statements:</u></p> <ul style="list-style-type: none"> • To participate in AdWords, the buyer inputs the maximum CPC. See Claim 1, element (b).

<p>accepting the second request from the buyer, and receiving the performance data from the buyer, are performed by a master controller.”</p>	<ul style="list-style-type: none"> • The buyer agrees to Google AdWord’s terms and conditions. The terms and conditions state that the buyer “shall pay all charges in accordance with the payment terms in the applicable IO or Program FAQ.” See Claim 1, element (c). • To participate in AdWords, the buyer signs up with Google AdWords. See Claim 1, element (c). • To participate in AdWords, the buyer activates the AdWords account. See Claim 1, element (c). • To participate in AdWords, the buyer chooses the keyword and creates the ad. See Claim 1, element (c). • The Google AdWords system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The Google AdWords system accepts a first request from the buyer, a second request from the buyer, and receives performance data from the buyer. See Analysis Claim 1(a). • Google AdWords system uses computer software with routines that carries out control over routines that accept a first request from the buyer, a second request from the buyer, and performance data from the buyer. This constitutes the master controller. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 13	
<p>(pre) “The method of claim 1,”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p>

	<ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) wherein the price is determined at least partially upon participation of the buyer in an auction.</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Google system involves an auction with more than one buyer. <ul style="list-style-type: none"> ○ “Your CPC bid is the upper limit you set on the amount you’re willing to spend for a click when your ad appears. Your actual cost is usually less than this. It’s called a bid because Google auctions the position on the page.” GO-253 ○ “In this example, you will see how the rank number, position and actual cost-per-click charges are calculated. Here are three advertisers running ads on the same keywords. Each advertiser has a different cost per click bid, and Quality Score. Google calculates a rank number by multiplying the CPC bid by the Quality Score. Advertiser A has the highest rank number, .72. This means they get position number 1. Next, Google calculates how much to charge each advertiser for a click. The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would cause the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B’s rank number (.65) by A’s Quality Score (1.8). The result is the CPC that would cause advertiser A’s ad to appear in advertiser B’s position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents. For advertiser B, Google divides advertiser C’s rank number (.38) by B’s Quality Score (1) which equals 38 cents – the amount

that would cause advertiser B's ad to appear in advertiser C's position. To appear above that position, Google adds \$.01 to this amount. This yields 39 cents." GO-279-280

- The buyer's CPC bid is the buyer's auction bid.
 - "Your CPC bid is the upper limit you set on the amount you're willing to spend for a click when your ad appears. Your actual cost is usually less than this. It's called a bid because Google auctions the position on the page." GO-275
- The buyer's CPC bid multiplied by Quality Score is the rank.
 - "Google calculates a rank number by multiplying the CPC bid by the Quality Score." GO-279
 - "Rank number determined by: maximum cost-per-click (CPC), or maximum cost-per-impression (CPM), and Quality Score" GO-290.
- The buyer's rank determines the actual cost per click.
 - "The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would case the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B's rank number (.65) by A's Quality Score (1.8). The result is the CPC that would cause advertiser A's ad top appear in advertiser B's position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents." GO-278-280
- The actual cost per click is the price that the buyer pays. The actual cost per click is equal or less than the buyer's CPC bid.
 - "Actual cost-per-click (CPC) This is the amount you'll

	<p>actually pay for a click on your ad. . . Your actual CPC will be equal or less than the CPC bid you specify for your ad group or keyword.” GO-67</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The Google system involves an auction with more than one buyer. • The buyer’s CPC bid is the buyer’s auction bid. The buyer’s participation in the auction, or input of the CPC bid, at least partially determines the price. This is because the buyer’s CPC bid multiplied by Quality Score is the rank, which in turn determines the actual cost per click. The actual cost per click is the price that the buyer pays. • Alternatively, the buyer’s participation in the auction affects the price in another way. The buyer’s CPC bid is the buyer’s auction bid. It affects price because it is the highest that the bidder can be charged. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 14	
(pre) “The method of claim 1”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the global communications network is the Internet.”	<p><u>Defendant’s Descriptions and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Google’s method of doing business, See GO 1-GO 380. • Google describes the product, internet advertisement space, over the internet. See Claim 1, element (a).

- Google accepts the buyer's maximum CPC over the internet. See Claim 1, element (b).
- Google accepts payment over the internet. See Claim 2.
- The buyer agrees to Google AdWord's terms and conditions over the internet. See Claim 1, element (c).
- The buyer signs up with Google AdWords over the internet. See Claim 1, element (c).
- The Google AdWords system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c).
- Google provides the buyer with tutorials and FAQs about its system over the internet. See generally GO 1-GO 380.

Analysis:

- The internet is a global communication network. See Claim 1, preamble.
- A "business" is the purchase and sale of goods in an attempt to make a profit. Selling internet advertising space to advertisers to make a profit is a business. Google uses the Google AdWords system to sell internet advertising space over the internet. Thus, the Google AdWords system is a method of doing business over a global communications system. Google conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its terms and services over the internet, accepting payment over the internet, accepting maximum CPCs from the buyer over the internet, accepting keyword selections over the internet, and providing tutorials and FAQs over the internet. See Claim 1, preamble.

Conclusion:

- Thus, the Google AdWords system is a method of doing

	business over a global communications network.
Claim 15	
(pre) “The method of claim 1”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“wherein the price is determined at least partially upon an offer received from the buyer.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in AdWords, the buyer inputs the maximum CPC. See Claim 1, element b. • The buyer’s maximum cost per click is a bid. <ul style="list-style-type: none"> ○ “Your CPC bid is the upper limit you set on the amount you’re willing to spend for a click when your ad appears. Your actual cost is usually less than this. It’s called a bid because Google auctions the position on the page.” GO-275 • Google uses the maximum CPC as the highest price the buyer will pay. <ul style="list-style-type: none"> ○ “Actual cost-per-click (CPC) This is the amount you’ll actually pay for a click on your ad. . . Your actual CPC will be equal or less than the CPC bid you specify for your ad group or keyword.” GO-67 ○ “Maximum CPC – amount that you are willing to pay for a click on your ad” G0 324 ○ “Google never charges more than this amount per click” GO-324 <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a method of Claim 1 wherein the price is determined at least partially upon an offer received from the

	<p>buyer.</p> <ul style="list-style-type: none"> Receiving a bid from the buyer is receiving an offer from the buyer, since a bid is an offer. Google receives the buyer's maximum CPC from the buyer. The maximum CPC is an offer. Thus, Google receives an offer from the buyer. The offer from the buyer affects price, since Google uses the maximum CPC as the highest price the buyer will pay. Thus, the price is determined at least partially upon an offer received from the buyer. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> Thus, this element is satisfied.
Claim 18	
<p>(pre) "A method of determining a price of a product using a global communications network, comprising the steps:"</p>	<p><u>Defendant's Statements and Depictions:</u></p> <ul style="list-style-type: none"> Google accepts the buyer's maximum CPC over the internet. See Claim 1, element b. The Google adWords system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element c. The buyer's actual cost falls between the maximum CPC and the minimum CPC. See Claim 1, element (b). Google calculates a Quality Score. The quality score for the ad ranking is based on the keyword's clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. See Claim 1, element (c). The buyer's actual cost per click depends on the buyer's Quality Score. This is because Buyer 1's CPC = (Rank of the person below Buyer 1) / (Buyer 1's Quality Score). Thus, the buyer's Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa. See Claim 1 element (c), Defendants' Statements and

	<p>Depictions.</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communications network. See Claim 1, preamble. • An internet advertisement space is a product, see Claim 1, element a. • Google uses the global communications network to collect information from buyers, including the maximum CPC, keyword selection, and ad text selection. Google uses that information, which is collected using the internet, to determine the price of the product. It uses the maximum CPC as the cap for price. It also uses the keyword and ad text to measure the quality score, which in turn affects price. Google ultimately assigns an actual cost per click, which depends on these factors. • Thus, the Google system is a method determining a price of a product, internet advertising space, using a global communications network. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “communicating to a buyer via the global communications network, data representing a plurality of products available, said plurality of products including a first product;”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Google describes its internet advertisement space, over the internet. See Claim 1, element a. • Google provides additional examples of Adwords ads and formats on its web pages. See Claim 1, element a. • Images describing more than one internet advertisement space are shown on the Google AdWord’s web pages. GO-2, GO-240, GO-276 • More than one position is available position is available for the internet advertisement.

- “The cost-per-click is the minimum amount needed to maintain a rank number higher than the next lower ad. This is one cent more than the amount that would result in a rank number that would cause the ad to appear in the next lower position. So for advertiser A, Google divides advertiser B’s rank number (.65) by A’s Quality Score (1.8). The result is the CPC that would cause advertiser A’s ad to appear in advertiser B’s position: .36 cents. To appear above that position, Google adds \$.01 to this amount. This results in an actual cost-per-click of 37 cents.” GO-279-280; See GO 275

Analysis:

- The internet is a global communications network. See Claim 1, preamble.
- An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product. See Claim 1, element a.
- The communications contained in Google’s web pages, described above, contain text and picture representations of internet advertising space. See Claim 1, element a. More than one type of advertisement is described, and more than one position for the advertisement is described. The Google web pages show that different advertisements may be purchased for different keywords, and that the advertisements may be in different positions. Thus, they show a plurality of products, including a first product.
- These communications are intended for the advertiser (see GO-2 “For advertisers”), who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement space.
- Thus, Google communicates to the buyer data representing a

	<p>plurality of products available.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Google system communicates to a buyer via the global communications network, data representing a plurality of products available, said plurality of products including a first product.
<p>(b) “accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined upon a performance of the buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement being communicated over the global communications network;”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer agrees to Google AdWord’s terms and conditions. The terms and conditions state that the buyer “shall pay all charges in accordance with the payment terms in the applicable IO or Program FAQ.” See Claim 1, element (c). • To participate in AdWords, the buyer signs up with Google AdWords. See Claim 1, element (c). • To participate in AdWords, the buyer activates the AdWords account. See Claim 1, element (c). • To participate in AdWords, the buyer chooses the keyword and creates the ad. See Claim 1, element (c). • Google calculates a Quality Score. The quality score for the ad ranking is based on the keyword’s clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. This information is found in the Google FAQ/Help Center. See Claim 1, element (c). • The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. See Claim 1, element (c). • Rank number is determined by maximum cost per click and Quality Score. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s Quality Score. This is because Buyer 1’s $CPC = (\text{Rank of the$

person below Buyer 1) / (Buyer 1's Quality Score). Thus, the buyer's Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa. See Claim 1, element (c).

- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases. See Claim 1, element (c).
- Google accepts the buyer's agreement to Google's terms and conditions, as well as the sign up and activation of the account. After the buyer agrees to Google's terms and conditions, signs up, and activates the account (among other things), Google begins running the ads on the Google network. See Claim 1, element (c).

Analysis:

- This element involves (1) "accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product," (2) "at a price to be determined upon a performance of the buyer while participating in a Price-Determining-Activity (PDA)," (3) "said acknowledgement being communicated over the global communications network."

price to be determined based upon a performance of the buyer while participating in a price determining activity

- The competitive submission of keywords and ad text is an "activity."
- The buyer's price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text. Google's web pages state that the

	<p>buyer’s actual cost per click depends on the buyer’s Quality Score, which depends on the relevance of the submitted keywords and ad text. In addition, the buyer’s comparative performance on keyword and ad text submission determines price. As the rank of the next-best competitor increases, the buyer’s actual cost per click increases. As the rank of the next-best competitor decreases, the buyer’s actual cost per click decreases. Therefore, the price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text.</p> <ul style="list-style-type: none"> • The buyer’s actual cost per click is directly related to the buyer’s performance while participating in the competitive submission of keywords and ad text, as discussed above. Thus, the price is determined based upon the performance of the buyer while participating in a price determining activity. <p><i>accepting acknowledgment from the buyer representing an intent of the buyer to buy the first product</i></p> <ul style="list-style-type: none"> • The buyer’s agreement to Google’s terms and conditions is an acknowledgment from the buyer representing the intent of the buyer to buy the first product at a price to be determined based on the performance of the buyer at a PDA. • This is because the terms and conditions state that the buyer “shall pay all charges in accordance with the payment terms in the applicable IO or Program FAQ.” The Program FAQ shows that the buyer’s actual cost per click is related to the buyer’s Quality Score, which depends on the relevance of the submitted keywords and text. In addition, Google’s web pages show that the buyer’s comparative performance on keyword and ad text submission also determines price. By agreeing to Google’s Terms and Conditions, the buyer acknowledges that Google will allow the price to be determined based on the
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	<p>performance of the buyer while performing keyword selection and ad creation, as outlined in Google’s Program FAQ.</p> <ul style="list-style-type: none"> • In the alternative, the buyer’s act of signing up, and/or activating the account is the acknowledgment of the intent to buy the product for a price to be determined based upon a performance of the buyer while participating in a price determining activity. The Program FAQ and Google’s help pages states that the buyer’s actual cost per click is related to the buyer’s Quality Score, which depends on the relevance of the submitted keywords and ad text. In addition, the FAQ and help pages indicate that the buyer’s comparative performance on keyword and ad text submission also determines price. Thus, the act of signing up, and/or activating the account is that acknowledgment of intent. • Google accepts the buyer’s agreement to Google’s terms and conditions, as well as the sign up and activation of the account. After the buyer agrees to Google’s terms and conditions, signs up, and activates the account (among other things), Google begins running the ads on the Google network. <p><i>said acknowledgement being communicated over the global communications network</i></p> <ul style="list-style-type: none"> • The buyer agrees to Google’s terms and conditions, signs up, and activates the account over the internet. • The internet is a global communications network. See Claim 1, preamble. Thus, the acknowledgment is communicated over the internet. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(c) “determining the performance of the buyer;”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Google calculates a Quality Score. The quality score for the ad

	<p>ranking is based on the keyword’s clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. This information is found in the Google FAQ/Help Center. See Claim 1, element (c).</p> <ul style="list-style-type: none"> • The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. See Claim 1, element (c). • Rank number is determined by maximum cost per click and Quality Score. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s Quality Score. This is because Buyer 1’s CPC = (Rank of the person below Buyer 1) / (Buyer 1’s Quality Score). Thus, the buyer’s Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because Buyer 1’s CPC = (Rank of the person below Buyer 1) / (Buyer 1’s Quality Score). As the rank of the next-best competitor increases, the buyer’s actual cost per click increases. As the rank of the next-best competitor decreases, the buyer’s actual cost per click decreases. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves determining the performance of the buyer. The Google AdWords system determines the performance of the buyer by collecting the keyword and ad text selection. • The competitive submission of keywords and ad text is an “activity.” The buyer’s performance is how well the buyer does at this task. Google’s web pages state that Google
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	<p>calculates a Quality Score, from this information, which determines price. The Quality Score depends on the relevance of the submitted keywords and ad text, so it depends on the performance of the buyer. By evaluating the keyword and the ad text, Google determines the performance of the buyer.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(d) and assigning a price to the product, said price being scaled to the performance of the buyer</p>	<p><u>Defendant's Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Google calculates a Quality Score. The quality score for the ad ranking is based on the keyword's clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. See Claim 1, element (c). • The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. See Claim 1, element (c). • Rank number is determined by maximum cost per click and Quality Score. See Claim 1, element (c). • The buyer's actual cost per click depends on the buyer's Quality Score. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. Thus, the buyer's Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa. See Claim 1, element (c). • The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual

	<p>cost per click decreases. See Claim 1, element (c).</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • Google assigns a price, since it states that it calculates an actual CPC. • A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer. Under the Google AdWords system, the price is relative or proportionate to the performance of the buyer in the competitive submission of ad text and keyword selection. • This is because the Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. The buyer's actual cost per click depends on the buyer's Quality Score. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. Thus, the buyer's Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa. • The buyer's actual cost per click is also directly related to the buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases. • Thus, assigns a price to the product that is scaled to the performance of the buyer. <p><u>Conclusion</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 20	
(pre) The method of	<u>Defendant's Statements & Depictions:</u>

claim 18, further comprising the step of	<ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <u>Analysis:</u> <ul style="list-style-type: none"> • See Analysis for Claim 18. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “accepting payment information from the buyer over the global communications network.”	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • Google collects payment information including currency, billing address, and credit card information over the internet. See Claim 2, element a. <u>Analysis:</u> <ul style="list-style-type: none"> • This element involves accepting payment information from the buyer over the global communications network. • Currency, billing address, and credit card information is payment information. The Google system accepts payment information including currency, billing address, and credit card information over the internet. The internet is a global communications network. See Claim 1, preamble. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 21	
(pre) The method of claim 18, further comprising the step of	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <u>Analysis:</u> <ul style="list-style-type: none"> • See Analysis for Claim 18. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price is dependent at least partially upon a bid selected by the buyer.”	<u>Defendant’s Statements and Depictions:</u> <ul style="list-style-type: none"> • To participate in AdWords, the buyer selects and inputs the maximum CPC. See Claim 1, element b. <ul style="list-style-type: none"> ○ “How do I create an AdWords account?” GO-373-375.

	<p>The web page lists the following steps, which include choosing a maximum CPC:</p> <ul style="list-style-type: none"> ▪ Target & Create Ad ▪ Choose Keywords ▪ Choose Daily Budget ▪ Choose Maximum Cost-Per-Click (CPC) ▪ Review Your Selections ▪ Sign Up ▪ Activate Your Account <ul style="list-style-type: none"> • The buyer’s maximum cost per click is a bid. See Claim 15, element a. • Google uses the maximum CPC as the highest price the buyer will pay. See Claim 15, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a method of Claim 1 wherein the price is determined at least partially upon a bid received from the buyer. • Google states that the maximum CPC is a bid. The bid from the buyer affects price, since Google uses the maximum CPC as the highest price the buyer will pay. The bid is selected by the buyer, since the buyer chooses and inputs the maximum CPC. Thus, the price is determined at least partially upon a bid selected by the buyer. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 22	
(pre) “The method of claim 18, further comprising the step of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18.

	<p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “wherein the price is determined at least partially upon results of an auction.”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Google system involves an auction. See Claim 13, element a. • The buyer’s CPC bid is the buyer’s auction bid. See Claim 13, element a. • The buyer’s CPC bid multiplied by Quality Score is the rank. See Claim 13, element a. • The buyer’s rank determines the actual cost per click. See Claim 13, element a. • The actual cost per click is the price that the buyer pays. See Claim 13, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The Google system involves an auction. The buyer’s CPC bid is the buyer’s auction bid. The buyer’s participation in the auction, or input of the CPC bid, determines at least partially the price. This is because the buyer’s CPC bid multiplied by Quality Score is the rank, which in turn determines the actual cost per click. The actual cost per click is the price that the buyer pays. Thus, the price is determined at least partially upon the results of an auction. • Alternatively, the buyer’s participation in the auction affects the price in another way. The buyer’s CPC bid is the buyer’s auction bid. It affects price because it is the highest that the bidder can be charged. Thus the price is determined at least partially upon results of an auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>Claim 23</p>	

<p>(pre) “The method of claim 18, further comprising the step of”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “wherein the price is determined at least partially upon an offer received from the buyer.”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 15, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 15, element a.
<p>Claim 30</p>	
<p>(pre) “A system for conducting e-commerce over a global communications network, comprising a computer server having access to the global communications network, and being programmed to:”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Google’s method of doing business, See GO 1-GO 380. • Google sells online advertising space to advertisers. See Claim 1, preamble. • Google describes the product, internet advertisement space, over the internet. See Claim 1, element (a). • Google accepts the buyer’s maximum CPC over the internet. See Claim 1, element b. • Google accepts payment information over the internet. See Claim 2. • The buyer agrees to Google AdWord’s terms and conditions over the internet. See Claim 1, element (c). • The buyer signs up with Google AdWords over the internet. See Claim 1, element (c). • The Google AdWords system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c).

	<ul style="list-style-type: none"> • Google provides the buyer with tutorials and FAQs about its system over the internet. See generally GO 1-GO 380. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communication network. See Claim 1, preamble. • Google AdWords is a system that sells online advertising space over the internet. Thus, it is a system for conducting e-commerce over a global communications network. • Google uses a computer server having access to the global communications that is programmed to implement the AdWords system. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “communicate to a buyer via the global communications network, data representing a plurality of products, said plurality of products including a first product;”</p>	<ul style="list-style-type: none"> • See Claim 18, element a.
<p>(b) “accept acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined dependent on a performance of the</p>	<ul style="list-style-type: none"> • See Claim 18, element b.

<p>buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement being communicated over the global communications network;”</p>	
<p>(c) determining the performance of the buyer based upon data received over the global communications network;</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 18(c) • The Google AdWords system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element c. • Google calculates a Quality Score. The quality score for the ad ranking is based on the keyword’s clickthrough rate on Google, the relevance of the keyword and ad to the search query, and other relevance factors. See Claim 1, element (c). • The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. See Claim 1, element (c). • Rank number is determined by maximum cost per click and Quality Score. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s Quality Score. This is because Buyer 1’s CPC = (Rank of the person below Buyer 1) / (Buyer 1’s Quality Score). Thus, the buyer’s Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa. See Claim 1, element (c).

- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. As the rank of the next-best competitor increases, the buyer's actual cost per click increases. As the rank of the next-best competitor decreases, the buyer's actual cost per click decreases. See Claim 1, element (c).

Analysis:

- This element involves determining the performance of the buyer based upon the data received over the global communications network.
- The data received is the keyword selection and ad text, which the Google AdWords system receives from the buyer over the internet. The internet is a global communications network. See Claim 1, preamble.
- Determining the performance of the buyer based on the keyword selection and ad text is determining the performance of the buyer based upon the data received over the global communications network.
- Google determines the buyer's performance based on the keyword selection and ad text. The Quality Score depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Score, resulting in a lower price. The buyer's actual cost per click depends on the buyer's Quality Score. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's Quality Score})$. Thus, the buyer's Quality Score is inversely related to his Quality Score; as Quality Score increases, CPC decreases, and vice versa.
- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because Buyer 1's $CPC = (\text{Rank of the person below Buyer 1}) / (\text{Buyer 1's$

	<p>Quality Score). As the rank of the next-best competitor increases, the buyer’s actual cost per click increases. As the rank of the next-best competitor decreases, the buyer’s actual cost per click decreases.</p> <ul style="list-style-type: none"> • Thus, Google determines the performance of the buyer based on the keyword selection and ad text. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>“and (d) assign a price to the product, said price being scaled to the performance of the buyer.”</p>	<ul style="list-style-type: none"> • See Claim 18, element d.

AOL

AOL Search Marketplace is an AOL branded version of Google AdWords. This is evidenced by AOL's web pages, which state:

- “The service, built on Google AdWords advertising technology . . .” AOL 21
- “AOL Search Marketplace uses a white-label version of Google AdWords, providing advertisers the ability initially to buy search advertising that solely targets the AOL Search audience on the AOL client applications and AOL.com. This services uses the same best-of-breed functionality, features and reporting that advertisers have come to expect from Google AdWords.” AOL 21.
- “MarketPlace is an AOL branded version of Google AdWords. It provides selected Advertisers the opportunity to purchase, and manage AOL search-related advertising directly on AOL Search properties. Advertisers benefits include greater control over their sponsored links; potentially yielding more effective buys and increasing advertiser ROI. AOL Search Marketplace sponsored links are currently available to select advertisers. Auction-based, cost per click pricing influences position, which is blended with Google results.” AOL 15.
- “Sponsored links sometimes referred to as pay-per-click ads are administered, sorted and maintained by Google and AOL. For more information on how pay-per-click ads work and how to sign up, go to <http://adwords.google.com> and <http://aolmedianetworks.com/search>.” AOL 29.
- “Sponsored Links: Sponsored links that appear in AOL Search results or on AOL channels are listings that have been purchased by companies to have their business or Web sites appear for specific search terms related to their services. Sponsored links, also sometimes referred to as pay-per-click ads, are administered, sorted and maintained by Google and AOL. For more information on how pay-per-click ads works and how to sign up, go to AdWords.Google.com and AOLMediaNetworks.com/Search.” AOL 25.

Since AOL uses a version of Google AdWords, and directs users to Google's web pages, the same analysis for Google (in the table above) applies. Please refer to the Google table, above, for the infringement contentions for AOL.

Microsoft

Claim language	Microsoft
Claim 1	
Pre “A method of doing business over a global communications network comprising the steps:”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Microsoft adCenter’s method of doing business, see MIC 1-113. • Microsoft sells online advertising space to advertisers. <ul style="list-style-type: none"> ○ “Search advertising campaigns on Live Search are a cinch with Microsoft adCenter. We built adCenter to help you maximize your media buy. It has the tools, reports, and guidelines you need to build successful search ads seen by millions of Live Search users—users who come looking for you. By offering innovative audience intelligence and campaign management tools, adCenter gives you just what you need to develop a successful search advertising campaign.” MIC 11. ○ “Microsoft adCenter puts your ad in front of a qualified audience of proven buyers.” MIC 17. ○ MIC 18 has an example of an adCenter ad. • Microsoft adCenter describes the product, internet advertisement space, over the internet. See Claim 1, element (a). • To participate in the Microsoft adCenter system, the buyer inputs the maximum bid. Microsoft adCenter accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • Microsoft adCenter accepts payment information over the internet. See Claim 2. • The buyer agrees to Microsoft adCenter’s terms and conditions over the internet. See Claim 1, element (c). • The buyer signs up with Microsoft adCenter over the internet. See Claim 1, element (c).

	<ul style="list-style-type: none"> • The Microsoft adCenter system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c). • Microsoft adCenter provides the buyer with tutorials and FAQs about it system over the internet. See generally, MIC 1-113. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • A “Global Communication Network” includes a network that connects computers around the world. The internet is a global communication network because it connects and allows communications between computers and computers networks around the world. <ul style="list-style-type: none"> ○ See also Claim 14, which states that the internet is a global communications network. • A “business” is the purchase and sale of goods in an attempt to make a profit. Selling internet advertising space to advertisers to make a profit is a business. Microsoft adCenter uses its system to sell internet advertising space over the internet. Microsoft adCenter conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its terms and services over the internet, accepting payment over the internet, accepting maximum bids from the buyer over the internet, accepting keyword selections over the internet, and providing tutorials and FAQs over the internet. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a)“communicating to a buyer via the global communications network, a description of the product”	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Microsoft describes its internet advertisement space over the internet. <ul style="list-style-type: none"> ○ “Enter the New Era <ul style="list-style-type: none"> ▪ Microsoft Digital Advertising Solutions

	<ul style="list-style-type: none"> ▪ Connect with your target audience across multiple digital touchpoints. ▪ Search Advertising >> ▪ Digital Ad Opportunities >> ▪ MIC 2 <ul style="list-style-type: none"> ○ “Discover Search Advertising <ul style="list-style-type: none"> ▪ The Microsoft adCenter platform offers innovative audience intelligence tools to generate improved search advertising results. It can help you improve your return on investment when it comes to paid search advertising.” MIC 8 ○ “Live Search <ul style="list-style-type: none"> ▪ Small, medium, and large businesses can harness the power, ease, and adaptability of online search advertising through Live Search. Create your search campaign using the powerful targeting features of Microsoft adCenter, where you can reach pre-qualified buyers from a large pool of people and generate the clicks you want.” MIC 9 <ul style="list-style-type: none"> ● Microsoft provides additional examples of Microsoft ads on its web pages. <ul style="list-style-type: none"> ○ Pictorial of Microsoft Ads are found at MIC 18, MIC 25-26. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> ● This element involves (1) communicating to a buyer a description of the product, a (2) via the global communications network <p><i>Communicating to a buyer a description of a product</i></p> <ul style="list-style-type: none"> ● An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product.
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	<ul style="list-style-type: none"> • The communications contained in Microsoft web pages, described above, contain text and picture representations of internet advertising space. These communications are intended for the advertiser, who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement spaces. • Thus, Microsoft communicates to the buyer a description of the product. <p><i>Via the global communications system</i></p> <ul style="list-style-type: none"> • The internet is a global communications network since it connects computers around the world. • The Microsoft system shows its web pages over the internet. The web pages that are shown over the internet include those that contain text and pictorial descriptions the internet advertising space that Microsoft offers. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Therefore, the Microsoft system involves communicating to the buyer a description of the product via the global communication network.
<p>(b) [price range] “accepting a first request from the buyer to buy the product for a price to be determined within a price range;”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in the Microsoft adCenter system, the buyer inputs a maximum bid. Microsoft accepts the buyer’s maximum bid over the internet. <ul style="list-style-type: none"> ○ “Steps to Create a Campaign . . . <ul style="list-style-type: none"> ▪ 1 Target your customers ▪ 2 Create your ad ▪ 3 Enter your keywords ▪ 4 Set your budget ▪ Confirm and activate your ad campaign MIC 43. ○ “With Microsoft search advertising, the amount you

spend on your search advertising campaign is based on two things that you decide:

- Your monthly budget
- Your maximum bid (the highest amount you're willing to pay when someone clicks on your ad)."

MIC 26

- "You'll never be charged more than your base bid and you may even pay less. In search advertising, you just need to pay one cent more than the next highest bidder to ensure your ad is displayed." MIC 26
- "The minimum bid is 0.05 (USD).
 - The minimum bid is 0.05 (USD). The default bid will apply to all of your keywords, so choose an amount you're comfortable paying each time a user clicks your ad. Once you finish signing up, you can change the default bid as often as you want. The higher the bid, the more likely your ad will appear higher in search results.
 - MIC 48
- The buyer's actual cost falls between the minimum bid and the maximum bid.
 - "You are only charged when someone clicks your ad. This is known as the cost-per-click (CPC) billing method. The amount that you pay for each click is calculated based on the base amount you bid for each keyword, your budget limits, and any incremental bidding based on target demographics." MIC 28.
 - "Actual cost per click
 - You enter the bid for the keyword, and the actual cost per click is deducted from the campaign budget when someone clicks your ad. The actual cost per click for each keyword varies based on

the following:

- Your bid on a keyword
 - Other advertisers' bid for the same keyword
 - The number of customers who click your ad
 - Whether you have set incremental bids for targeting customers by location, time, or demographics and the amount of those bids
- You are never charged more than your bid, and you might pay less. In online advertising, you just need to pay \$.01 more than the next highest bidder, all other factors being equal. Microsoft adCenter does not reveal what other advertisers are bidding.” MIC 34.
- “Ad Ranking is your ad’s position on a search results page. Various elements affect your rank including relevance, click-thru rate, and bid price.
 - The more relevant the ad, the greater the probability of achieving a high rank
 - Greater relevance mitigates higher competitive bids
 - Higher rank increases the opportunity to convert searchers into customers
 - On the following chart, Advertiser C, having a highly relevant ad, spends three times less to reach the number one rank compared to the amount Advertiser B must spend to achieve the same rank.” [insert chart] MIC 91.

Analysis:

- This element involves (1) accepting a “request from the buyer to

	<p>buy the product”, where (2) the price is “to be determined within a price range”. We consider these in reverse order.</p> <p><i>The price of the product is “to be determined within a price range.”</i></p> <ul style="list-style-type: none"> • An internet advertising space is a product, as discussed in Claim 1, element a. Under the Microsoft system, the price falls within a price range between the maximum bid and the minimum bid. As described above, Microsoft accepts a maximum bid, which is a price that is input by the buyer. The minimum bid is 0.05 USD. The buyer’s actual cost falls between the maximum bid and the minimum bid. Thus, the price of the product is to be determined within a price range. <p><i>Microsoft adCenter “accepts a request from the buyer to buy the product for a price”</i></p> <ul style="list-style-type: none"> • Accepting something that the buyer asks for is accepting a “request from the buyer” since a “request” is something asked for. The buyer’s maximum bid is a request from the buyer to buy the product at a price to be determined within a price range, since Microsoft’s web pages state that the price of the internet advertisement space will fall between the maximum and minimum bid. When the buyer inputs a maximum bid, the buyer is aware that Microsoft will determine the price between the minimum bid and the maximum bid. • Microsoft accepts the request (if it is in the proper form), and, by doing so, allows that bid to participate in the continuing auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Microsoft system accepts a request from the buyer to buy the product for a price to be determined within a price range.
(c) “accepting a second request from the buyer to allow the price to be	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer agrees to Microsoft’s terms and conditions over the internet. The terms and conditions state that the buyer shall pay for all charges and fees in accordance with Microsoft’s standard

<p>determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA);”</p>	<p>policies.</p> <ul style="list-style-type: none"> ○ “You will pay Microsoft the charges due for the adCenter Program based on the number of Clicks delivered by Microsoft multiplied by the cost of the Advertisement, which will be computed in accordance with Microsoft’s standard policies, and in United States currency (the “Click Fees”).” MIC 110 ● To participate in the Microsoft system, the buyer signs up with Microsoft over the internet. <ul style="list-style-type: none"> ○ “The minimum bid is 0.05 (USD). <ul style="list-style-type: none"> ▪ The minimum bid is 0.05 (USD). The default bid will apply to all of your keywords, so choose an amount you’re comfortable paying each time a user clicks your ad. Once you finish signing up, you can change the default bid as often as you want. The higher the bid, the more likely your ad will appear higher in search results.” MIC 48 ● To participate in the Microsoft system, the buyer activates the Microsoft account. <ul style="list-style-type: none"> ○ “Steps to Create a Campaign . . . <ul style="list-style-type: none"> ▪ 1 Target your customers ▪ 2 Create your ad ▪ 3 Enter your keywords ▪ 4 Set your budget ▪ Confirm and activate your ad campaign MIC 43. ▪ “Confirm your ad campaign details” MIC 49-50. ▪ “Activate your account” MIC 51-52 ● To participate in the Microsoft system, the buyer chooses the keyword and creates the ad. The Microsoft system collects data from the buyer including the keyword and ad text over the internet. MIC 46-47
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	<ul style="list-style-type: none">● The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection.<ul style="list-style-type: none">○ “Actual cost per click<ul style="list-style-type: none">▪ You enter the bid for the keyword, and the actual cost per click is deducted from the campaign budget when someone clicks your ad. The actual cost per click for each keyword varies based on the following:<ul style="list-style-type: none">● Your bid on a keyword● Other advertisers’ bid for the same keyword● The number of customers who click your ad● Whether you have set incremental bids for targeting customers by location, time, or demographics and the amount of those bids● Microsoft accepts the buyer’s agreement to Microsoft’s terms and conditions over the internet, as well as the activation of the account. After the buyer agrees to Microsoft’s terms and conditions and activates the account (among other things), Microsoft begins running ads on the Microsoft network.<ul style="list-style-type: none">○ “Steps to Create a Campaign . . .<ul style="list-style-type: none">▪ 1 Target your customers▪ 2 Create your ad▪ 3 Enter your keywords▪ 4 Set your budget▪ Confirm and activate your ad campaign MIC 43.● Microsoft accepts the buyer’s maximum bid over the internet.
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See Claim 1, element b.

Analysis:

- This element involves (1) accepting a “request from the buyer” to allow (2) “the price to be determined based upon a performance of the buyer while participating in a price determining activity.” We consider these in reverse order.

“price to be determined based upon a performance of the buyer while participating in a price determining activity”

- The competitive submission of keywords and ad text is an “activity.”
- The buyer’s price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text. Microsoft’s web pages state that the buyer’s actual cost per click depends on the buyer’s keyword and ad text. Therefore, the price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text.

“accepting a second request from the buyer”

- The buyer’s agreement to Microsoft’s terms and conditions is a request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. This is because the terms and conditions state that the buyer shall pay for all charges and fees in accordance with Microsoft’s standard policies. Microsoft’s web pages state that the buyer’s actual cost per click is related to the buyer’s keyword and ad text selection. By agreeing to Microsoft’s Terms and Conditions, the buyer requests that Microsoft allow the price to be determined based on the performance of the buyer while performing keyword selection and ad text selection, as outlined in Microsoft’s web pages.
- In the alternative, the buyer’s act of activating the account is the

	<p>request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. Microsoft’s web pages state that the buyer’s actual cost per click is related to the buyer’s keyword selection and ad text. Thus, the act of signing up, and/or activating the account is a request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity.</p> <ul style="list-style-type: none"> • Microsoft accepts the buyer’s agreement to Microsoft’s terms and conditions over the internet, as well as the activation of the account. After the buyer agrees to Microsoft’s terms and conditions and activates the account (among other things), Microsoft begins running ads on the Microsoft network. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Therefore, the Microsoft system accepts a second request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA).
<p>“(d) [receiving performance data over internet] “receiving data from the buyer over the global communications network, said data representing the performance of the buyer during the PDA;”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Microsoft system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • Microsoft accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • As discussed above, the performance of the buyer during the PDA is the buyer’s selection of keyword and ad text. Data

	<p>representing the buyer’s performance consists of the keyword and ad text. This data is received by Microsoft from the buyer over the internet, which is a global communications network. See analysis for Claim 1, preamble.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(e) “and determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Microsoft system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • Microsoft accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection, as well as other advertisers’ bid for the same keyword. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves (1) determining the price of the product based at least partially upon the data received, (2) said price being within the range and scaled to the performance of the buyer. <p><i>Determining the price of the product based at least partially upon the data received</i></p> <ul style="list-style-type: none"> • The data received is the keyword selection and ad text, which the Microsoft system receives from the buyer over the internet. • Determining the price of the product at least partially on the keyword selection and ad text is determining the product based at least partially upon the data received. • Microsoft determines the price of the product at least partially on the keyword selection and ad text. This is because the actual

	<p>cost per click depends on the buyer’s ad text and keyword selection.</p> <ul style="list-style-type: none"> • Thus, Microsoft determines the price of the product at least partially on the data received: the ad text and keyword selection. <p><i>Said price being within the price range and scaled to the performance of the buyer</i></p> <ul style="list-style-type: none"> • Under the Microsoft system, the price falls within a price range between the maximum bid and the minimum bid. As described above, Microsoft accepts a maximum bid, which is a price that is input by the buyer. The minimum bid is 0.05 USD. The buyer’s actual cost falls between the maximum bid and the minimum bid. Thus, the price is to be determined within a price range. • A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer. Under the Microsoft system, the price is relative or proportionate to the performance of the buyer in the competitive submission of bids, ad text, and keyword selection. The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s bid, ad text,. See Claim 1, element (c). <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Microsoft system involves determining the price of the product based at least partially upon the data received, said price being within the range and scaled to the performance of the buyer.
Claim 2	
“(pre) the method of claim 1, further comprising the step of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p>

	<ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“(a) accepting payment information from the buyer over the global communications network.”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • Microsoft adCenter collects billing information from the buyer. <ul style="list-style-type: none"> ○ “Setting up billing for your account <ul style="list-style-type: none"> ▪ You will need a valid credit card when you first create your account . . . We will charge this same credit card each month for new charges based on the number of clicks your ad receive.” MIC 30 ○ “What do I need? You’ll need your credit card and billing information.” MIC 43. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves accepting payment information from the buyer over the global communications network. • Billing information is payment information. The Microsoft adCenter system accepts payment information including billing address, and credit card information over the internet. The internet is a global communications network. See Claim 1, preamble. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 9	
“(pre) The method of claim 1,”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“(a) wherein the PDA	<p><u>Defendant’s Statements and Depictions:</u></p>

requires participation of at least one participant in addition to the buyer.”

- The Microsoft adCenter system involves more than one buyer. This is indicated by the fact that buyers compete against each other for ad space.
 - “Ad Ranking is your ad’s position on a search results page. Various elements affect your rank including relevance, click-thru rate, and bid price.
 - The more relevant the ad, the greater the probability of achieving a high rank
 - Greater relevance mitigates higher competitive bids
 - Higher rank increases the opportunity to convert searchers into customers
 - On the following chart, Advertiser C, having a highly relevant ad, spends three times less to reach the number one rank compared to the amount Advertiser B must spend to achieve the same rank.” MIC 91.
 - “About ad position
 - The position of your ad on a Live Search results page or a content-based webpage is determined by how it ranks against competing ads. Rank is determined by many factors, including:
 - The amount you bid for the keyword that is used in the search query or that matches keywords found on the content-based webpage
 - Your ad’s relevance
 - Your ad’s performance, or click-through rate, on search results or content-based webpages. MIC 38”
- In order to determine the price, Microsoft adCenter compares the rank of more than one buyer.

- “Ad Ranking is your ad’s position on a search results page. Various elements affect your rank including relevance, click-thru rate, and bid price.
 - The more relevant the ad, the greater the probability of achieving a high rank
 - Greater relevance mitigates higher competitive bids
 - Higher rank increases the opportunity to convert searchers into customers
 - On the following chart, Advertiser C, having a highly relevant ad, spends three times less to reach the number one rank compared to the amount Advertiser B must spend to achieve the same rank.” MIC 91.
- “About ad position
 - The position of your ad on a Live Search results page or a content-based webpage is determined by how it ranks against competing ads. Rank is determined by many factors, including:
 - The amount you bid for the keyword that is used in the search query or that matches keywords found on the content-based webpage
 - Your ad’s relevance
 - Your ad’s performance, or click-through rate, on search results or content-based webpages. MIC 38”
- The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element (c).

Analysis:

	<ul style="list-style-type: none"> • This claim involves a further step of wherein the PDA requires the participation of at least one participant in addition to the buyer. • The Microsoft adCenter system involves more than one buyer. The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The PDA requires the participation of at least one participant in addition to the buyer, because the buyer’s comparative performance on keyword and ad text submission determines price. Microsoft adCenter’s web pages show that the cost per click depends on the buyer’s ad text and keyword selection. In order for Microsoft adCenter to compare the performance, at least one participant in addition to the buyer is required. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the PDA in this instance, the competitive submission of keywords and ad text, requires the participation of more than one buyer.
Claim 10	
(pre) “The method as in claim 9, further comprising”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 9. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 9. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “the step of determining the price based at least partially upon a competition between the buyer and at least	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Microsoft adCenter system involves more than one buyer. See Claim 9, element a. • To participate in the Microsoft system, the buyer chooses the keyword and creates the ad. The Microsoft system collects data from the buyer including the keyword and ad text over the

<p>one participant using the PDA.”</p>	<p>internet. See Claim 1, element c.</p> <ul style="list-style-type: none"> • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element c. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element requires the step of determining the price based at least partially upon a competition between the buyer and at least one participant using the PDA. • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. • Therefore, the price is determined based at least partially upon a competition between the buyer and at least one participant using the PDA. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>Claim 11</p>	
<p>(pre) “The method as in claim 10, wherein the at least one participant is a second buyer, and further comprising the steps of”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 10. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 10. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “accepting a second request from the second buyer to</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • There is more than one buyer in the Microsoft adCenter system. See Claim 9, element a.

<p>buy the product for a second price to be determined within the price range, and”</p>	<ul style="list-style-type: none"> • To participate in the Microsoft adCenter system, each buyer inputs the maximum bid. See Claim 1, element b. • The minimum bid is five cents. See Claim 1, element b. • Each buyer’s actual cost falls between the maximum bid and the minimum bid. See Claim 1, element b. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element requires accepting a second request from a second buyer for a second price to be determined within the price range. <p><i>Second buyer:</i></p> <ul style="list-style-type: none"> • There is more than one buyer in the Microsoft adCenter system. This is indicated by Microsoft adCenter’s web pages, which states that ads compete against other ads. Since there is more than one buyer, there is a second buyer. <p><i>accepting a second request from the second buyer to buy the product for a second price to be determined within the price range</i></p> <ul style="list-style-type: none"> • To participate in the Microsoft adCenter system, each buyer inputs a maximum bid. Thus, the second buyer inputs a second maximum bid. Under the Microsoft adCenter system, each buyer’s price falls within a price range between that buyer’s maximum bid and minimum bid. The second buyer’s actual cost falls between the second buyer’s maximum bid and the minimum bid. Thus, the second buyer’s price is to be determined within a price range between the second buyer’s maximum bid and the minimum bid. • Accepting something that the second buyer asks for is accepting a second request from the second buyer since a “request” is something asked for. The second buyer’s maximum bid is a request from the second buyer to buy the product at a price to be determined within a price range, since Microsoft adCenter’s web pages state that the price will fall between the second buyer’s
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	<p>minimum and maximum bid. When the second buyer inputs a maximum bid, the second buyer is aware that Microsoft adCenter will determine the price between the minimum bid and the maximum bid. Microsoft adCenter accepts the second buyer’s request (if it is in the proper form), and, by doing so, allows that bid to participate in the continuing auction.</p> <ul style="list-style-type: none"> • Thus, the Microsoft adCenter system accepts a second request from the second buyer to buy the product for a second price to be determined within the price range. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(b) “determining said second price based at least partially upon the competition.”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Microsoft adCenter system involves more than one buyer. See Claim 9, element a. • To participate in the Microsoft adCenter system, <u>each</u> buyer chooses the keyword and ad text. The Microsoft adCenter system collects data from the buyer including the keyword over the internet. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection,. See Claim 1, element (c). • To participate in the Microsoft adCenter system, the buyer inputs a maximum bid. See Claim 1, element (b). <p><u>Analysis:</u></p> <p><i>This element requires the step of determining the second price based at least partially upon the competition.</i></p> <ul style="list-style-type: none"> • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. • The PDA in this instance is the competitive submission of

	<p>keywords and ad text, as discussed in Claim 1, element c. The price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. The buyer’s price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text. Microsoft’s web pages state that the buyer’s actual cost per click depends on the buyer’s keyword and ad text. Therefore, the price is determined based on the competition of the buyer and other buyers while submitting keywords and ad text.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>Claim 12</p>	
<p>(pre) “The method of claim 1,”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “wherein the steps of accepting the first request from the buyer, accepting the second request from the buyer, and receiving the performance data from the buyer, are performed by a master controller.”</p>	<p><u>Defendant’s Depictions and Statements:</u></p> <ul style="list-style-type: none"> • To participate in the Microsoft adCenter system, the buyer inputs a maximum bid. See Claim 1, element (b). • The buyer agrees to Microsoft’s terms and conditions over the internet. The terms and conditions state that the buyer shall pay for all charges and fees in accordance with Microsoft’s standard policies. See Claim 1, element (c). • To participate in the Microsoft adCenter system, the buyer signs up with Microsoft adCenter over the internet. See Claim 1, element (c). • To participate in the Microsoft system, the buyer activates the

	<p>Microsoft account. See Claim 1, element (c).</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The Microsoft adCenter system accepts a first request from the buyer, a second request from the buyer, and receives performance data from the buyer. See Analysis Claim 1(a). • Microsoft adCenter’s system uses computer software with routines that carries out control over routines that accept a first request from the buyer, a second request from the buyer, and performance data from the buyer. This constitutes the master controller. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 13	
(pre) “The method of claim 1,”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“(a) wherein the price is determined at least partially upon participation of the buyer in an auction.”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Microsoft adCenter system involves bidding for internet advertisement space. <ul style="list-style-type: none"> ○ “You are only charged when someone clicks your ad. This is known as the cost-per-click (CPC) billing method. The amount that you pay for each click is calculated based on the base amount you bid for each keyword, your budget limits, and any incremental bidding based on target demographics.” MIC 28. ○ “You are never charged more than your bid, and you might pay less. In online advertising, you just need to

	<p>pay \$.01 more than the next highest bidder, all other factors being equal. Microsoft adCenter does not reveal what other advertisers are bidding.” MIC 34.</p> <ul style="list-style-type: none"> • The buyer’s maximum bid is the highest that the buyer can be charged per click. <ul style="list-style-type: none"> ○ “You are never charged more than your bid, and you might pay less. In online advertising, you just need to pay \$.01 more than the next highest bidder, all other factors being equal. Microsoft adCenter does not reveal what other advertisers are bidding.” MIC 34. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • An auction is the sale of property based on bids. The Microsoft adCenter system involves the sale of internet advertising space based on bids. The buyer’s maximum bid is the buyer’s auction bid. It affects price because it is the highest that the bidder can be charged. Thus, the price is determined at least partially upon participation of the buyer in an auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 14	
(pre) “The method of claim 1”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the global communications network is the	<p><u>Defendant’s Descriptions and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Microsoft adCenter’s method of doing business, see MIC 1-113. • Microsoft sells online advertising space to advertisers. See

<p>Internet.”</p>	<p>Claim 1, preamble.</p> <ul style="list-style-type: none"> • Microsoft describes its internet advertisement space over the internet. See Claim 1, element a. • To participate in the Microsoft adCenter system, the buyer inputs a maximum bid. Microsoft accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • Microsoft adCenter accepts payment information over the internet. See Claim 2. • The buyer agrees to Microsoft’s terms and conditions over the internet. See Claim 1, element (c). • To participate in the Microsoft system, the buyer signs up with Microsoft over the internet. See Claim 1, element (c). • . The Microsoft system collects data from the buyer including the keyword over the internet. See Claim 1, element (c). • Microsoft adCenter provides the buyer with tutorials and FAQs about it system over the internet. See generally, MIC 1-113. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communication network. See Claim 1, preamble. • A “business” is the purchase and sale of goods in an attempt to make a profit. Selling internet advertising space to advertisers to make a profit is a business. Microsoft adCenter sells internet advertising space over the internet. Thus, the Microsoft adCenter system is a method of doing business over a global communications system. Microsoft adCenter conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its terms and conditions over the internet, accepting payment over the internet, accepting maximum bids from the buyer over the internet, accepting keyword selections over the internet, and
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	<p>providing tutorials and FAQs over the internet.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Microsoft adCenter system is a method of doing business over a global communications network.
Claim 15	
(pre) “The method of claim 1”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“wherein the price is determined at least partially upon an offer received from the buyer.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in the Microsoft adCenter system, the buyer inputs a maximum bid. See Claim 1, element b. • The buyer’s maximum cost per click is a bid. Microsoft adCenter uses the maximum bid as the highest price that the buyer will pay. <ul style="list-style-type: none"> ○ “You are never charged more than your bid, and you might pay less. In online advertising, you just need to pay \$.01 more than the next highest bidder, all other factors being equal. Microsoft adCenter does not reveal what other advertisers are bidding.” MIC 34 <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a method of Claim 1 wherein the price is determined at least partially upon an offer received from the buyer. • Receiving a bid from the buyer is receiving an offer from the buyer, since a bid is an offer. Microsoft adCenter receives the buyer’s maximum bid, or offer, from the buyer. The offer from the buyer affects price, since Microsoft adCenter uses the

	<p>maximum bid as the highest price the buyer will pay. Thus, the price is determined at least partially upon an offer received from the buyer.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 18	
<p>(pre) “A method of determining a price of a product using a global communications network, comprising the steps:”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Microsoft adCenter accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • The Microsoft adCenter system collects data from the buyer including the keyword over the internet. See Claim 1, element (c). • The buyer’s actual cost falls between the maximum bid and the minimum bid. See Claim 1, element b. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element (c). • Microsoft adCenter calculates a click-through rate over the internet. The buyer’s actual cost per click is related to the click through rate. <ul style="list-style-type: none"> ○ “Actual cost per click <ul style="list-style-type: none"> ▪ You enter the bid for the keyword, and the actual cost per click is deducted from the campaign budget when someone clicks your ad. The actual cost per click for each keyword varies based on the following: <ul style="list-style-type: none"> • Your bid on a keyword • Other advertisers’ bid for the same keyword

	<ul style="list-style-type: none"> • The number of customers who click your ad • Whether you have set incremental bids for targeting customers by location, time, or demographics and the amount of those bids .” MIC 34 <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communications network. See Claim 1, preamble. • An internet advertisement space is a product, see Claim 1, element a. • Microsoft adCenter uses the global communications network to collect information from buyers, including the maximum bid, keyword selection, and ad text selection. It also calculates a click-through rate. Microsoft adCenter uses that information, which is collected using the internet, to determine the price of the product. It uses the maximum bid as the cap for price. The keyword, click-through rate, ad text, and bid also affect price. • Thus, the Microsoft adCenter system is a method determining a price of a product, internet advertising space, using a global communications network. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “communicating to a buyer via the global communications network, data representing a plurality of products	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Microsoft adCenter describes its internet advertisement space, over the internet. See Claim 1, element a. • Microsoft adCenter provides additional examples of its ads on its web pages. See Claim 1, element a. • Images describing more than one internet advertisement space are shown on the Microsoft adCenter’s web pages. See MIC 25.

available, said plurality of products including a first product;”

- More than one position is available position is available for the internet advertisement.
 - “About ad position
 - The position of your ad on a Live Search results page or a content-based webpage is determined by how it ranks against competing ads. Rank is determined by many factors, including:
 - The amount you bid for the keyword that is used in the search query or that matches keywords found on the content-based webpage
 - Your ad’s relevance
 - Your ad’s performance, or click-through rate, on search results or content-based webpages.
 - Ad position on search results pages
 - To appear at the top of a search results page in positions 1, 2, or 3, as shown, your ad must meet a minimum level of performance, also known as performance threshold. IF the performance is not as strong, the ad appears on the right side of the results page (also called the “right rail”).
 - . . . To help improve ad position, try the following:
 - Increase the relevance of your ad.
 - Increase the relevance of your landing page.
 - Write a more effective ad.

	<ul style="list-style-type: none"> • Increase the bid for your keywords, including incremental bids for targeting.” MIC 38. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communications network. See Claim 1, preamble. • An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product. See Claim 1, element a. • The communications contained in Microsoft adCenter’s web pages, described above, contain text and picture representations of internet advertising space. See Claim 1, element a. More than one type of advertisement is described, and more than one position for the advertisement is described. The Microsoft adCenter web pages show that different advertisements may be purchased for different keywords, and that the advertisements may be in different positions. Thus, they show a plurality of products, including a first product. • These communications are intended for the advertiser, who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement space. • Thus, Microsoft adCenter communicates to the buyer data representing a plurality of products available. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Microsoft adCenter system communicates to a buyer via the global communications network, data representing a plurality of products available, said plurality of products including a first product.
(b) “accepting	<u>Defendants’ Statements and Depictions:</u>

<p>acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined upon a performance of the buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement being communicated over the global communications network;”</p>	<ul style="list-style-type: none"> • The buyer agrees to Microsoft’s terms and conditions over the internet. See Claim 1, element (c). • To participate in the Microsoft system, the buyer signs up with Microsoft over the internet. See Claim 1, element (c). • To participate in the Microsoft system, the buyer activates the Microsoft account. See Claim 1, element (c). • To participate in the Microsoft adCenter system, the buyer inputs a maximum bid. Microsoft accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element (c). • Microsoft adCenter calculates a click-through rate over the internet. The buyer’s actual cost per click is related to the click through rate. See Claim 18, preamble. • Microsoft accepts the buyer’s agreement to Microsoft’s terms and conditions over the internet, as well as the activation of the account. After the buyer agrees to Microsoft’s terms and conditions and activates the account (among other things), Microsoft begins running ads on the Microsoft network. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves (1) “accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product,” (2) “at a price to be determined upon a performance of the buyer while participating in a Price-Determining-Activity (PDA),” (3) “said acknowledgement being communicated over the global communications network.” <p><i>“price to be determined based upon a performance of the buyer while</i></p>
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participating in a price determining activity”

- The competitive submission of keywords and ad text is an “activity.” It is a price determining activity because Microsoft’s web pages state that the buyer’s price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text.

“accepting acknowledgment from the buyer representing an intent of the buyer to buy the first product”

- The buyer’s agreement to Microsoft adCenter’s terms and conditions is acknowledgment from the buyer representing an intent of the buyer to buy the product. This is because the terms and conditions state that the buyer shall pay for all charges and fees in accordance with Microsoft’s standard policies. By agreeing to Microsoft adCenter’s terms and conditions, the buyer acknowledges that Microsoft adCenter will allow the price to be determined based on the performance of the buyer while performing keyword and ad text selection, as outlined in Microsoft adCenter’s web pages.
- In the alternative, the buyer’s act of signing up and/or activating the account is the acknowledgment of the intent to buy the product for a price to be determined based upon a performance of the buyer while participating in a price determining activity. Microsoft’s web pages state that the cost will depend on the buyer’s ad text and keyword selection. Thus, the act of signing up and/or activating the account is the acknowledgment of intent.
- Microsoft accepts the buyer’s agreement to Microsoft’s terms and conditions over the internet, as well as the activation of the account. After the buyer agrees to Microsoft’s terms and conditions and activates the account (among other things), Microsoft begins running ads on the Microsoft network.

	<p><i>“said acknowledgement being communicated over the global communications network.”</i></p> <ul style="list-style-type: none"> • The buyer agrees to Microsoft adCenter’s terms and conditions, activates the account, creates an account, and turns on the ad over the internet. • The internet is a global communications network. See Claim 1, preamble. Thus, the acknowledgment is communicated over the internet. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(c) “determining the performance of the buyer;”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element c. • Microsoft adCenter calculates a click-through rate over the internet. The buyer’s actual cost per click is related to the click through rate. See Claim 18, preamble. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves determining the performance of the buyer. The Microsoft adCenter system determines the performance of the buyer by collecting the keyword and ad text selection, and comparing it to the other buyers. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(d) “and assigning a price to the product, said price being scaled to the performance of the</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Microsoft assigns an actual cost per click. <ul style="list-style-type: none"> ○ “Actual cost per click <ul style="list-style-type: none"> ▪ You enter the bid for the keyword, and the actual cost per click is deducted from the campaign

<p>buyer”</p>	<p>budget when someone clicks your ad. The actual cost per click for each keyword varies based on the following:</p> <ul style="list-style-type: none"> • Your bid on a keyword • Other advertisers’ bid for the same keyword • The number of customers who click your ad • Whether you have set incremental bids for targeting customers by location, time, or demographics and the amount of those bids <ul style="list-style-type: none"> • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element c. • Microsoft adCenter calculates a click-through rate over the internet. The buyer’s actual cost per click is related to the click through rate. See Claim 18, preamble. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • Microsoft adCenter assigns a price, since it states that it calculates an actual cost per click. • A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer. Under the Microsoft adCenter system, the price is relative to the performance of the buyer in the competitive submission of ad text and keyword selection. • Thus, Microsoft adCenter assigns a price to the product that is scaled to the performance of the buyer. <p><u>Conclusion:</u></p>
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	<ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 20	
(pre) “The method of claim 18, further comprising the step of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “accepting payment information from the buyer over the global communications network.”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • Microsoft adCenter collects billing information from the buyer. See Claim 2, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves accepting payment information from the buyer over the global communications network. • Billing information is payment information. The Microsoft adCenter system accepts payment information including billing address, and credit card information over the internet. The internet is a global communications network. See Claim 1, preamble. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 21	
(pre) “The method of claim 18, further comprising the step of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price is dependent at least	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in the Microsoft adCenter system, the buyer

<p>partially upon a bid selected by the buyer.”</p>	<p>inputs a maximum bid. See Claim 1, element b.</p> <ul style="list-style-type: none"> • The buyer’s maximum cost per click is a bid. Microsoft adCenter uses the maximum bid as the highest price that the buyer will pay. See Claim 15, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a method of Claim 1 wherein the price is determined at least partially upon an offer received from the buyer. • The maximum bid is a bid selected by the buyer. It is selected by the buyer, since the buyer chooses and inputs the maximum bid. Microsoft adCenter uses the buyer’s maximum bid from the buyer as the highest price the buyer will pay. Thus, the price is determined at least partially upon an offer received from the buyer. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>Claim 22</p>	
<p>(pre) “The method of claim 18, further comprising the step of”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “wherein the price is determined at least partially upon results of an auction.”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Microsoft adCenter system involves bidding for internet advertisement space. See Claim 13, element a. • The buyer’s maximum bid is the highest that the buyer can be charged per click. See Claim 13, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • An auction is the sale of property based on bids. The Microsoft

	<p>adCenter system involves the sale of internet advertising space based on bids. The buyer's maximum bid is the buyer's auction bid. It affects price because it is the highest that the bidder can be charged. Thus, the price is determined at least partially upon participation of the buyer in an auction.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 23	
(pre) "The method of claim 18, further comprising the step of"	<p><u>Defendant's Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant's Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) "wherein the price is determined at least partially upon an offer received from the buyer."	<p><u>Defendants' Statements and Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 15, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 15, element a.
Claim 30	
(pre) "A system for conducting e-commerce over a global communications network, comprising a computer server having access to the global communications network, and being	<p><u>Defendant's Statements and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Microsoft adCenter's method of doing business, see MIC 1-113. • Microsoft sells online advertising space to advertisers. See Claim 1, preamble. • Microsoft describes its internet advertisement space over the internet. See Claim 1, element a. • To participate in the Microsoft adCenter system, the buyer inputs a maximum bid. Microsoft accepts the buyer's maximum bid over the internet. See Claim 1, element b.

<p>programmed to:”</p>	<ul style="list-style-type: none"> • Microsoft adCenter accepts payment information over the internet. See Claim 2. • The buyer agrees to Microsoft’s terms and conditions over the internet. See Claim 1, element (c). • To participate in the Microsoft system, the buyer signs up with Microsoft over the internet. See Claim 1, element (c). • The Microsoft system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • Microsoft adCenter provides the buyer with tutorials and FAQs about it system over the internet. See generally, MIC 1-113. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communication network. See Claim 1, preamble. • Microsoft adCenter is a system that sells online advertising space over the internet. Thus, it is a system for conducting e-commerce over a global communications network. • Microsoft adCenter uses a computer server having access to the global communications that is programmed to implement its system. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “communicate to a buyer via the global communications network, data representing a plurality of products, said plurality of products including a first product;”</p>	<p>See Claim 18, element a.</p>

<p>(b) “accept acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined dependent on a performance of the buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement being communicated over the global communications network;”</p>	<p>See Claim 18, element b.</p>
<p>(c) “determining the performance of the buyer based upon data received over the global communications network;”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 18(c) • The Microsoft system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • Microsoft accepts the buyer’s maximum bid over the internet. See Claim 1, element (b). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection, as well as other advertisers’ bid for the same keyword. See Claim 1, element (c). • Microsoft adCenter calculates a click-through rate over the

	<p>internet. The buyer’s actual cost per click is related to the click through rate. See Claim 18, preamble.</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves determining the performance of the buyer based upon the data received over the global communications network. • The data received is the keyword and ad text selection, which the Microsoft adCenter system receives from the buyer over the internet. The internet is a global communications network. See Claim 1, preamble. • Determining the performance of the buyer based on the keyword and ad text is determining the performance of the buyer based upon the data received over the global communications network. • Microsoft adCenter determines the buyer’s performance based on the keyword and ad text. The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. • Thus, Microsoft adCenter determines the performance of the buyer based on the keyword and ad text. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>“and (d) assign a price to the product, said price being scaled to the performance of the buyer.”</p>	<p>See Claim 18, element d.</p>

Yahoo!

Claim language	Yahoo!
Claim 1	
(Preamble) “A method of doing business over a global communications network comprising the steps:”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Yahoo’s method of doing business, See YAH 1-575. • Yahoo sells online advertising space to advertisers. <ul style="list-style-type: none"> ○ “Sponsored Search is an effective way to advertise. <ul style="list-style-type: none"> ▪ It’s search engine marketing that puts your ads in front of customers at the precise moment they’re looking for what you offer. ▪ Pay only when your ads are clicked. ▪ Target customers locally or nationally. ▪ Control how much you spend with budgeting tools.” YAH 1. ○ “Advertise your business in Yahoo! Search results.” YAH 2. ○ “Yahoo! Sponsored Search is a form of search engine marketing that lets you create ads that appear in search results on the Web’s most popular destination and other sites in the Yahoo! distribution network . . .” YAH 3. ○ “How Sponsored Search Works” YAH 120 (tutorial). • Yahoo describes the product, internet advertisement space, over the internet. See Claim 1, element (a). • To participate in the Yahoo system, the buyer inputs the maximum bid. Yahoo accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • Yahoo accepts payment information over the internet. See Claim 2. • The buyer agrees to Yahoo’s terms and conditions over the

	<p>internet. See Claim 1, element (c).</p> <ul style="list-style-type: none"> • The buyer signs up with Yahoo over the internet. Se Claim 1, element (c). • The Yahoo system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c). • Yahoo provides the buyer with tutorials and FAQs about it system over the internet. See generally, YAH 1-575. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • A “Global Communication Network” includes a network that connects computers around the world. The internet is a global communication network because it connects and allows communications between computers and computers networks around the world. See also Claim 14, which states that the internet is a global communications network. • A “business” is the purchase and sale of goods in an attempt to make a profit. Selling internet advertising space to advertisers to make a profit is a business. Yahoo uses its system to sell internet advertising space over the internet. Yahoo conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its terms and services over the internet, accepting payment over the internet, accepting the maximum bid from the buyer over the internet, accepting keyword selections over the internet, and providing tutorials and FAQs over the internet. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “communicating to a buyer via the global	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Yahoo describes its internet advertisement space over the internet.

<p>communications network, a description of the product”</p>	<ul style="list-style-type: none"> ○ “Yahoo! Sponsored Search is a form of search engine marketing that lets you create ads that appear in search results on the Web’s most popular destination and other sites in the Yahoo! distribution network . . .” YAH 3. ○ Product features are described at YAH 3. ○ Yahoo provides additional examples of Yahoo ads and formats on its web pages. ○ Images describing the product are also shown at YAH 125-127, YAH 138, YAH 2. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> ● This element involves (1) communicating to a buyer a description of the product, a (2) via the global communications network <p><i>Communicating to a buyer a description of a product</i></p> <ul style="list-style-type: none"> ● An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product. ● The communications contained in Yahoo’s web pages, described above, contain text and picture representations of internet advertising space. These communications are intended for the advertiser, who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement spaces. Thus, Yahoo communicates to the buyer a description of the product. <p><i>Via the global communications system</i></p> <ul style="list-style-type: none"> ● The internet is a global communications network. See Claim 1, preamble. ● The Yahoo system shows its web pages over the internet. The web pages that are shown over the internet include those that contain text and pictorial descriptions the internet advertising space that Yahoo offers.
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	<p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Therefore, the Yahoo system involves communicating to the buyer a description of the product via the global communication network.
<p>(b) “accepting a first request from the buyer to buy the product for a price to be determined within a price range;”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in the Yahoo system, the buyer inputs a maximum bid. Yahoo accepts the buyer’s maximum bid over the internet. <ul style="list-style-type: none"> ○ “Start Advertising with Yahoo! Search Marketing in 5 Simple Steps <ul style="list-style-type: none"> ▪ Target Customers by Geographic Location ▪ Choose Keywords Related to Your Business ▪ Tells Us How Much You’d Like to Spend ▪ Create Your Ad ▪ Activate or Save Your Ad” YAH 82 ○ “Self Serve <ul style="list-style-type: none"> ▪ Select your keywords. ▪ Write your ads. ▪ Set your budget and bid amount.” YAH 61. ○ “Step 3: Tell us how much you’d like to spend” YAH 93 ○ YAH 95 shows a box for maximum bid. ○ “Tell us how much you’d like to spend. <ul style="list-style-type: none"> ▪ How much would you like to spend each day? Enter a daily spending limit for your account and click Estimate. You will then see a recommended bid for the keywords you selected, as well as estimates of your monthly impressions and clicks. <ul style="list-style-type: none"> ▪ 1. Account Daily Spending Limit ▪ 2. Maximum bid. YAH 116. ○ “You determine how much you want to pay for each click to your web site. <ul style="list-style-type: none"> ▪ The amount you’re willing to pay for each click is

known as your maximum bid.

- If you don't have a bid amount in mind, we'll recommend one. You'll pay only when your ad is clicked." YAH 8.
- Yahoo's tutorial also shows how to set price per click. YAH 138.
- Yahoo assigns a minimum bid that depends on the buyer's keyword quality.
 - "We have changed the way we set the minimum bid required to participate in a Sponsored Search keyword market. Previously, the minimum bid for any keyword in our system was \$0.10. With this change, the minimum bid required to participate in a keyword market can be higher or lower than \$0.10. The amount set as your minimum bid on a keyword can vary depending on multiple factors, such as the relevance of your keywords (as measured by the quality of the ads associated with them in an ad group), and the number of bidders and their bid amounts in the particular keyword market. It is not based on advertiser conversions." YAH 572.
 - "Minimum bids for Sponsored Search are no longer fixed at \$0.10. Your new minimum bids can be lower or higher than \$0.10. Content Match bids currently remain at \$0.10." YAH 572
 - "How do you determine what my minimum bid is for a keyword? The amount set as your minimum bid on a keyword in Sponsored Search can vary depending on multiple factors, such as the relevance of your keywords (as measured by the quality of the ads associated with them), and the number of bidders and bid amounts in the particular keyword market." YAH 573

- “Keyword minimum bids can vary depending on multiple factors, such as:
 - How much the keyword is worth, or its value, which we may determine by looking at, among other things, the number of bidders and bid amounts in the keyword marketplace.
 - Ad and keyword quality – The relevance of your keywords and your ads, determined by multiple factors, such as how frequently your ads are clicked relative to their competitors.
 - Minimum bids are not based upon conversion data.” YAH 209
- The buyer’s actual cost falls between the maximum bid and the minimum bid.
 - “For any given click, our systems are designed to charge you only the minimum amount required to attain the ad’s position, based on your ad’s quality and bid. You’ll never be charged more than your bid and, in some instances; your costs may be lower than your actual bid.” YAH 41.
 - “Unlike other forms of advertising that feature set pricing, Yahoo! Search Marketing allows you to determine how much you’d like to pay, so you’re in control of your costs. With Sponsored Search and Content Match, you pay only when your ad is clicked. You’ll set a bid (the maximum amount you’re willing to pay each time your ad is clicked) and an account daily spending limit to help you keep your costs in check.” YAH 59.
 - “Pay only up to a maximum bid.” YAH 96

Analysis:

	<ul style="list-style-type: none"> • This element involves (1) accepting a “request from the buyer to buy the product”, where (2) the price is “to be determined within a price range”. We consider these in reverse order. <p><i>The price of the product is “to be determined within a price range.”</i></p> <ul style="list-style-type: none"> • An internet advertising space is a product, as discussed in Claim 1, element a. Under the Yahoo system, the price falls within a price range between the maximum bid and the minimum bid. As described above, Yahoo accepts a maximum bid, which is a price that is input by the buyer. Yahoo assigns a minimum bid that depends on the buyer’s keyword quality. The buyer’s actual cost falls between the maximum bid and the minimum bid. Thus, the price of the product is to be determined within a price range. <p><i>Yahoo’s system “accepts a request from the buyer to buy the product for a price”</i></p> <ul style="list-style-type: none"> • Accepting something that the buyer asks for is accepting a “request from the buyer” since a “request” is something asked for. The buyer’s maximum bid is a request from the buyer to buy the product at a price to be determined within a price range, since Yahoo’s web pages state that the price of the internet advertisement space will fall between the minimum and maximum bid. When the buyer inputs a maximum bid, the buyer is aware that Yahoo will determine the price between the minimum bid and the maximum bid. • Yahoo accepts the request (if it is in the proper form), and, by doing so, allows that bid to participate in the continuing auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Yahoo system accepts a request from the buyer to buy the product for a price to be determined within a price range.
(c) “accepting a second request from	<u>Defendants’ Statements and Depictions:</u>

the buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA);”

- The buyer agrees to Yahoo’s terms and conditions over the internet. The terms and conditions state that the buyer shall pay for all charges and fees incurred in connection with each Program.
 - “CHARGES, FEES, AND PAYMENT. For any Program in which you enroll, you agree to pay us for all charges and fees you incur in connection with each Program in the currency indicated by us.” YAH 153
- To participate in the Yahoo system, the buyer signs up with Yahoo over the internet.
 - Online Sign-up YAH 108-S110
 - “Once you complete the sign up process, you can log in to your account and create additional ads.” YAH 98.
- To participate in the Yahoo system, the buyer activates the Yahoo account.
 - “Start Advertising with Yahoo! Search Marketing in 5 Simple Steps. . .
 - 5 Activate or Save Your Ad
 - Review your ad and activate it right away by entering your billing information, or save it until you’re ready to activate.” YAH 82.
 - “Step 5: Review and activate your ad” YAH 105
 - “Ready to begin receiving targeted customer leads” Enter your account information and click Activate Now. Your ad will be up and running shortly.” YAH 106.
- To participate in the Yahoo system, the buyer chooses the keyword and creates the ad. The Yahoo system collects data from the buyer including the keyword and ad text over the internet.
 - “Start Advertising with Yahoo! Search Marketing in 5 Simple Steps

	<ul style="list-style-type: none"> ▪ Target Customers by Geographic Location ▪ Choose Keywords Related to Your Business ▪ Tells Us How Much You'd Like to Spend ▪ Create Your Ad ▪ Activate or Save Your Ad” YAH 82. <ul style="list-style-type: none"> ○ “Step 2: Choose keywords related to your business” YAH 87 ○ “2. Choose Keywords . . .For best results, each keyword should be precise; it should describe a product or service your prospective customers will find when they navigate your site.” YAH 88 ○ See YAH 132-134. ○ “Step 4: Create your ad” YAH 97 ○ “4. Create Your Ad <ul style="list-style-type: none"> ▪ Write an ad to display to prospective customers. Once you complete the sign up process, you can log in to your account and create additional ads.” YAH 98. ○ YAH 99-100 shows a form for creating an ad over the internet. See YAH 135-136 <ul style="list-style-type: none"> ● Yahoo calculates a Quality Index. The Quality Index is based on the keyword’s clickthrough rate and the relevance of the keyword and ad to the search query. <ul style="list-style-type: none"> ○ “Your quality index does not affect the way your ads are ranked in search results. Rather, it is simply relative measure of your ad’s performance. Of course, ad performance is a factor in the way ads are ranked, so we provide the quality index to help advertisers determine how well their ads are meeting the needs of users, and to guide change to creative, if necessary to improve ranking. YAH 32.
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	<ul style="list-style-type: none">○ “How is the quality index calculated? Each time your ad is shown, quality index is determined by relevancy factors along with the ad’s click-through rate relative to its position and to other ads displayed at the same time.” YAH 33.○ “What relevance factors help determine the quality index? The quality index is primarily determined by your click-through rate and other relevance factors.* To help improve your quality index, focus on increasing your click-through rates by writing ads that appeal to users. *In the absence of enough click-through rate data, other relevancy factors will be used. YAH 35● The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price.<ul style="list-style-type: none">○ “Because quality index is indicative of an ad’s performance relative to competing ads, even an ad with a high click-through rate might have a low quality index if competing ads have higher click-through rates. YAH 52○ “Quality index is a measure of the relevancy of your ad compared to ads that it competes with. It is displayed as one to five bars, where more bars means higher quality. Quality index reflects your ad’s ability to meet the needs of users by looking at how relevant your ad is to each keyword, and also its click-through rate relative to its position and other ads displayed at the same time. Your ad’s quality index also impacts how much you need to bid and the positioning which your ad appears – in some instances, ads with a higher quality index may require a lower bid and/or receive better placement on the results page.” YAH 26
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	<ul style="list-style-type: none">○ “Ad quality is determined by an ad’s expected performance (based on various relevance factors considered by Yahoo’s ranking algorithms) and historical performance (click-through rate relative to the ad’s position on the page).” YAH 140○ “Your ad’s quality index also impacts how much you need to bid and the positioning which your ad appears – in some instances, ads with a higher quality index may require a lower bid and/or receive better placement on the results page.” YAH 26● The buyer’s actual cost per click depends on the buyer’s Quality Index.<ul style="list-style-type: none">○ Your ad’s quality index also impacts how much you need to bid and the positioning which your ad appears – in some instances, ads with a higher quality index may require a lower bid and/or receive better placement on the results page.” YAH 26○ “Managing Your Quality<ul style="list-style-type: none">▪ Quality plays an important role in how you get charged.▪ It can affect your minimum bid.▪ It affects the price you pay per click and your ads’ position in search results. YAH 217.▪ An ad’s rank will be determined by both bid amount and ad quality. Ads with higher quality can deliver a lower cost per click and/or may receive better placement on the results page relative to lower quality ads . . .” YAH 66.▪ “Ad quality is determined by an ad’s expected performance (based on various relevance factors considered by Yahoo’s ranking algorithms) and
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historical performance (click-through rate relative to the ad's position on the page)." YAH 140

- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because the quality index is a measure of the relevancy of the buyer's ad compared to ads that it competes with, and the quality index impacts the cost per click.
 - "Quality index is a measure of the relevancy of your ad compared to ads that it competes with. It is displayed as one to five bars, where more bars means higher quality. Quality index reflects your ad's ability to meet the needs of users by looking at how relevant your ad is to each keyword, and also its click-through rate relative to its position and other ads displayed at the same time. Your ad's quality index also impacts how much you need to bid and the positioning which your ad appears – in some instances, ads with a higher quality index may require a lower bid and/or receive better placement on the results page." YAH 26.
- Yahoo accepts the buyer's agreement to Yahoo's terms and conditions, as well as the sign up and activation of the account. After the buyer agrees to Yahoo's terms and conditions and activates the account (among other things), Yahoo begins running the ads on the Yahoo network.
 - "Ready to begin receiving targeted customer leads" Enter your account information and click Activate Now. Your ad will be up and running shortly." YAH 106.
 - Yahoo's terms and conditions are shown in YAH 152-174.
 - "Once you complete the sign up process, you can log in to your account and create additional ads." YAH 98

- “Start Advertising with Yahoo! Search Marketing in 5 Simple Steps. . . [step] 5 Activate or Save Your Ad
 - Review your ad and activate it right away be entering your billing information, or save it until you’re ready to activate.” YAH 82

Analysis:

- This element involves (1) accepting a “request from the buyer” to allow (2) “the price to be determined based upon a performance of the buyer while participating in a price determining activity.” We consider these in reverse order.

“price to be determined based upon a performance of the buyer while participating in a price determining activity”

- The competitive submission of keywords and ad text is an “activity.”
- The buyer’s price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text. Yahoo’s web pages state that the buyer’s actual cost per click depends on the buyer’s quality index. The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the quality index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the quality index impacts the cost per click. Therefore, the price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text.

“accepting a second request from the buyer”

- The buyer’s agreement to Yahoo’s terms and conditions is a request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. This is because the terms and conditions state that the buyer shall pay for all charges and fees incurred in

connection with each Program. Yahoo's web pages state that the buyer's actual cost per click is related to the buyer's Quality Index, which depends on the relevance of the submitted keywords and text. The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer's ad compared to ads that it competes with, and the Quality Index impacts the cost per click. By agreeing to Yahoo's Terms and Conditions, the buyer requests that Yahoo allow the price to be determined based on the performance of the buyer while performing keyword selection and ad creation, as outlined in Yahoo's web pages.

- In the alternative, the buyer's act of signing up, and/or activating the account is the request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. Yahoo's web pages states that the buyer's actual cost per click is related to the buyer's Quality Index, which depends on the relevance of the submitted keywords and ad text. In addition, the web pages indicate that the buyer's comparative performance on keyword and ad text submission also determines price. Thus, the act of signing up, and/or activating the account is a request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity.
- Yahoo accepts the buyer's agreement to Yahoo's terms and conditions, as well as the sign up and activation of the account. After the buyer agrees to Yahoo's terms and conditions, signs up, and activates the account (among other things), Yahoo begins running the ads on the Yahoo network.

Conclusion:

- Therefore, the Yahoo system accepts a second request from the

	<p>buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA).</p>
<p>(d) “receiving data from the buyer over the global communications network, said data representing the performance of the buyer during the PDA;”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Yahoo system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • Yahoo calculates a Quality Index. The Quality Index is based on the keyword’s clickthrough rate and the relevance of the keyword and ad to the search query. See Claim 1, element (c). • The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s Quality Index. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • As discussed above, the performance of the buyer during the PDA is the buyer’s selection of advertising text and associated keywords. Data representing the buyer’s performance consists of the text and associated keywords that result from that selection. This data is received by Yahoo from the buyer over the internet, which is a global communications network. See analysis for Claim 1, preamble. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.

<p>(e) “and determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Yahoo system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element c. • Yahoo calculates a Quality Index. The Quality Index is based on the keyword’s clickthrough rate and the relevance of the keyword and ad to the search query. See Claim 1, element c. • The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price. See Claim 1, element c. • The buyer’s actual cost per click depends on the buyer’s Quality Index. See Claim 1, element c. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. See Claim 1, element c. • To participate in the Yahoo system, the buyer inputs a maximum bid. Yahoo accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • Yahoo assigns a minimum bid that depends on the buyer’s keyword quality. See Claim 1, element b. • The buyer’s actual cost falls between the maximum bid and the minimum bid. See Claim 1, element b. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves (1) determining the price of the product based at least partially upon the data received, (2) said price being within the range and scaled to the performance of the buyer. <p><i>Determining the price of the product based at least partially upon the data received</i></p>
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- The data received is the keyword selection and ad text, which the Yahoo system receives from the buyer over the internet.
- Determining the price of the product at least partially on the keyword selection and ad text is determining the product based at least partially upon the data received. Yahoo determines the price of the product at least partially on the keyword selection and ad text. The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in a lower price. The buyer's actual cost per click is directly related to the buyer's comparative performance. Thus, Yahoo determines the price of the product at least partially on the data received, the keyword selection and the ad text.

Said price being within the price range and scaled to the performance of the buyer

- Under the Yahoo system, the price falls within a price range between the maximum bid and the minimum bid. As described above, Yahoo accepts a maximum bid, which is a price that is input by the buyer. Yahoo assigns a minimum bid that depends on the buyer's keyword quality. The buyer's actual cost falls between the maximum bid and the minimum bid. Thus, the price is to be determined within a price range.
- A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer. Under the Yahoo system, the price is relative or proportionate to the performance of the buyer in the competitive submission of ad text and keyword selection. This is because the Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in a lower price. Less relevant ads receive a higher Quality Index, resulting in a higher price.

	<ul style="list-style-type: none"> The buyer’s actual cost per click is also directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. As the quality of other competitors increases, the buyer’s actual cost per click increases. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> Thus, the Yahoo system involves determining the price of the product based at least partially upon the data received, said price being within the range and scaled to the performance of the buyer.
Claim 2	
(pre) “the method of claim 1, further comprising the step of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> Thus, this element is satisfied.
“(a) accepting payment information from the buyer over the global communications network”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> Yahoo collects billing information from the buyer. <ul style="list-style-type: none"> “Start Advertising with Yahoo! Search Marketing in 5 Simple Steps. . . [step] 5 Activate or Save Your Ad <ul style="list-style-type: none"> Review your ad and activate it right away by entering your billing information, or save it until you’re ready to activate.” YAH 82 <p><u>Analysis:</u></p> <ul style="list-style-type: none"> This element involves accepting payment information from the buyer over the global communications network. Billing information is payment information. The Yahoo system accepts payment information including billing address and credit

	<p>card information over the internet. The internet is a global communications network. See Claim 1, preamble.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 9	
(pre) “The method of claim 1,”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“(a) wherein the PDA requires participation of at least one participant in addition to the buyer.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Yahoo system involves more than one buyer. <ul style="list-style-type: none"> ○ “Quality index is a measure of the relevancy of your ad compared to ads that it competes with.” YAH 26 ○ “Because quality index is indicative of an ad’s performance relative to competing ads, even an ad with a high click-through rate might have a low quality index if competing ads have higher click-through rates. YAH 52. • In order to determine the price, Yahoo compares the Quality Index of more than one buyer. <ul style="list-style-type: none"> ○ “Quality index is a measure of the relevancy of your ad compared to ads that it competes with.” YAH 26. ○ “Because quality index is indicative of an ad’s performance relative to competing ads, even an ad with a high click-through rate might have a low quality index if competing ads have higher click-through rates. YAH 52. • The buyer’s actual cost per click depends on the buyer’s Quality Index. See Claim 1, element c. <p><u>Analysis:</u></p>

	<ul style="list-style-type: none"> • This claim involves a further step of wherein the PDA requires the participation of at least one participant in addition to the buyer. • The Yahoo system involves more than one buyer. The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The PDA requires the participation of at least one participant in addition to the buyer, because the buyer’s comparative performance on keyword and ad text submission determines price. Yahoo’s web pages show that the cost per click is determined by comparing the rank of more than one participant. In order for Yahoo to compare the performance, at least one participant in addition to the buyer is required. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the PDA in this instance, the competitive submission of keywords and ad text, requires the participation of more than one buyer.
Claim 10	
(pre) “The method as in claim 9, further comprising”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 9. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 9. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “the step of determining the price based at least partially upon a competition between the buyer and at least	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Yahoo system involves more than one buyer. See Claim 9, element a. • To participate in the Yahoo system, the buyer chooses the keyword and creates the ad. See Claim 1, element c. • Yahoo calculates a Quality Index. The Quality Index is based

one participant using the PDA.”

on the keyword’s clickthrough rate and the relevance of the keyword and ad to the search query. See Claim 1, element c.

- The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price. See Claim 1, element c.
- The buyer’s actual cost per click depends on the buyer’s Quality Index. See Claim 1, element c.
- The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. See Claim 1, element c.

Analysis:

- This element requires the step of determining the price based at least partially upon a competition between the buyer and at least one participant using the PDA.
- The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. This is because the buyer’s comparative performance on keyword and ad text submission determines price. Yahoo’s web pages show that the cost per click is determined by comparing the Quality Index of more than one participant. The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. Therefore, the price is determined based at least partially upon a competition between the buyer and at least one participant using the PDA.

	<p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 11	
(pre) “The method as in claim 10, wherein the at least one participant is a second buyer, and further comprising the steps of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 10. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 10. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “accepting a second request from the second buyer to buy the product for a second price to be determined within the price range, and”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • There is more than one buyer in the Yahoo system. <ul style="list-style-type: none"> ○ “Quality index is a measure of the relevancy of your ad compared to ads that it competes with.” YAH 26 ○ “In the new advertising system, if you make your ads as relevant and specific as possible: <ul style="list-style-type: none"> ▪ You may be rewarded with a better rank – which could mean more traffic for a given bid. ▪ You can be less worried about competing with ads that are not as relevant. ▪ You may no longer have to compete in bidding wars. ▪ You can focus your efforts on making your marketing messages as effective as possible.” YAH 139. • To participate in the Yahoo system, each buyer inputs the maximum bid. See Claim 1, element b. <ul style="list-style-type: none"> ○ “Start Advertising with Yahoo! Search Marketing in 5 Simple Steps <ul style="list-style-type: none"> ▪ Target Customers by Geographic Location ▪ Choose Keywords Related to Your Business

	<ul style="list-style-type: none"> <ul style="list-style-type: none"> ▪ Tells Us How Much You'd Like to Spend ▪ Create Your Ad ▪ Activate or Save Your Ad" YAH 82 ○ "Step 3: Tell us how much you'd like to spend" YAH 93 ○ YAH 95 shows a box for maximum bid. ○ See YAH 136-137. ● Yahoo assigns a minimum cost per click that depends on the buyer's keyword quality. See Claim 1, element b. ● Each buyer's actual cost falls between the maximum bid and the minimum bid. See Claim 1, element b. <ul style="list-style-type: none"> ○ "For any given click, our systems are designed to charge you only the minimum amount required to attain the ad's position, based on your ad's quality and bid. You'll never be charged more than your bid and, in some instances; your costs may be lower than your actual bid." YAH 41 ● Each buyer's actual cost falls between the maximum bid and the minimum bid. <ul style="list-style-type: none"> ○ "For any given click, our systems are designed to charge you only the minimum amount required to attain the ad's position, based on your ad's quality and bid. You'll never be charged more than your bid and, in some instances; your costs may be lower than your actual bid." YAH 41 ○ "Unlike other forms of advertising that feature set pricing, Yahoo! Search Marketing allows you to determine how much you'd like to pay, so you're in control of your costs. With Sponsored Search and Content Match, you pay only when your ad is clicked. You'll set a bid (the maximum amount you're willing to pay each time your ad is clicked) and an account daily
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spending limit to help you keep your costs in check.”

YAH 59.

- “Pay only up to a maximum bid.” YAH 96

Analysis:

- This element requires accepting a second request from a second buyer for a second price to be determined within the price range.

Second buyer

- There is more than one buyer in the Yahoo system. This is indicated by Yahoo’s web pages, which states that ads compete against other ads. Since there is more than one buyer, there is a second buyer.

Accepting a second request from the second buyer to buy the product for a second price to be determined within the price range

- To participate in the Yahoo system, each buyer inputs a maximum bid. Thus, the second buyer inputs a second maximum bid. Under the Yahoo system, each buyer’s price falls within a price range between that buyer’s maximum bid and minimum bid. The second buyer’s actual cost falls between the second buyer’s maximum bid and the minimum bid. Thus, the second buyer’s price is to be determined within a price range between the second buyer’s maximum bid and minimum bid.
- Accepting something that the second buyer asks for is accepting a second request from the second buyer since a “request” is something asked for. The second buyer’s maximum bid is a request from the second buyer to buy the product at a price to be determined within a price range, since Yahoo’s web pages state that the price will fall between the second buyer’s minimum and maximum bid. When the second buyer inputs a maximum bid, the second buyer is aware that Yahoo will determine the price between the minimum bid and the maximum bid. Yahoo accepts the second buyer’s request (if it is in the proper form),

	<p>and, by doing so, allows that bid to participate in the continuing auction. Thus, the Yahoo system accepts a second request from the second buyer to buy the product for a second price to be determined within the price range.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(b) “determining said second price based at least partially upon the competition.”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Yahoo system involves more than one buyer. See Claim 9, element a. • To participate in the Yahoo system, each buyer chooses the keyword and creates the ad. See Claim 1, element c. <ul style="list-style-type: none"> ○ “Start Advertising with Yahoo! Search Marketing in 5 Simple Steps <ul style="list-style-type: none"> ▪ Target Customers by Geographic Location ▪ Choose Keywords Related to Your Business ▪ Tells Us How Much You’d Like to Spend ▪ Create Your Ad ▪ Activate or Save Your Ad” YAH 82 ○ “Step 2: Choose keywords related to your business” YAH 87. ○ “[step] 2. Choose Keywords . . .For best results, each keyword should be precise; it should describe a product or service your prospective customers will find when they navigate your site.” YAH 88; See YAH 132-134. ○ “Step 4: Create your ad” YAH 97 ○ “[step] 4. Create Your Ad <ul style="list-style-type: none"> ▪ Write an ad to display to prospective customers. Once you complete the sign up process, you can log in to your account and create additional ads.” YAH 98. ○ YAH 99-100 shows a form for creating an ad over the

internet. See YAH 135-136

- Yahoo calculates a Quality Index. The quality index is based on the keyword's clickthrough rate and the relevance of the keyword and ad to the search query. See Claim 1, element c.
- The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price. See Claim 1, element c.
- The buyer's actual cost per click depends on the buyer's Quality Index. See Claim 1, element c.
- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer's ad compared to ads that it competes with, and the Quality Index impacts the cost per click. See Claim 1, element c.

Analysis:

- This element requires the step of determining the second price based at least partially upon the competition.
- The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. This is because the buyer's comparative performance on keyword and ad text submission determines price. Yahoo's web pages show that the cost per click is determined by comparing the Quality Index of more than one participant. The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer's ad compared to ads that it competes with, and the Quality Index impacts the cost per click. Since each buyer's price is based on the competition, the second buyer's price is based at least

	<p>partially upon the competition as well.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 12	
(pre) “The method of claim 1,”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the steps of accepting the first request from the buyer, accepting the second request from the buyer, and receiving the performance data from the buyer, are performed by a master controller.”	<p><u>Defendant’s Depictions and Statements:</u></p> <ul style="list-style-type: none"> • To participate in the Yahoo system, the buyer inputs the maximum bid. See Claim 1, element (b). • The buyer agrees to Yahoo’s terms and conditions. The terms and conditions state that the buyer shall pay for all charges and fees incurred in connection with each Program. See Claim 1, element (c). • To participate in the Yahoo system, the buyer signs up with Yahoo over the internet. See Claim 1, element (c). • To participate in the Yahoo system, the buyer activates the Yahoo account. See Claim 1, element (c). • To participate in the Yahoo system, the buyer chooses the keyword and creates the ad. See Claim 1, element (c). • The Yahoo system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The Yahoo system accepts a first request from the buyer, a second request from the buyer, and receives performance data from the buyer. See Analysis Claim 1(a). • Yahoo’s system uses computer software with routines that

	<p>carries out control over routines that accept a first request from the buyer, a second request from the buyer, and performance data from the buyer. This constitutes the master controller.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 13	
(pre) “The method of claim 1,”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“(a) wherein the price is determined at least partially upon participation of the buyer in an auction.”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Yahoo system involves bidding for internet advertisement space. <ul style="list-style-type: none"> ○ “Self Serve <ul style="list-style-type: none"> ▪ Select your keywords. ▪ Write your ads. ▪ Set your budget and bid amount.” YAH 61. ○ “Start Advertising with Yahoo! Search Marketing in 5 Simple Steps <ul style="list-style-type: none"> ▪ Target Customers by Geographic Location ▪ Choose Keywords Related to Your Business ▪ Tells Us How Much You’d Like to Spend ▪ Create Your Ad. YAH 82 ○ “Step 3: Tell us how much you’d like to spend” YAH 93 ○ YAH 95 shows a box for maximum bid. ○ “Pay only up to a maximum bid.” YAH 96 • The buyer’s maximum bid is the highest that the buyer can be charged per click.

	<ul style="list-style-type: none"> ○ “How much do I get charged? Sponsored Search and Content Match feature cost per click pricing – you’re only charged when your ad is clicked, allowing you to maximize the return on your investment. You control how much you’re charged by entering a bid, which is the maximum price you’ll pay per click. In addition, if you focus on making your ads as good as possible—meaning they are highly relevant to users and highly likely to be clicked – you could be rewarded with an automatic discount on your cost per click.” YAH 39. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • An auction is the sale of property based on bids. The Yahoo system involves the sale of internet advertising space based on bids. The buyer’s maximum bid is the buyer’s auction bid. It affects price because it is the highest that the bidder can be charged. Thus, the price is determined at least partially upon participation of the buyer in an auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 14	
(pre) “The method of claim 1”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the global communications network is the Internet.”	<p><u>Defendant’s Descriptions and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Yahoo!’s method of doing business, See YAH 1-575. • Yahoo describes the product, internet advertisement space, over Internet.”

the internet. See Claim 1, element (a).

- Yahoo accepts the buyer's maximum bid over the internet. See Claim 1, element b.
- Yahoo accepts payment information over the internet. See Claim 2.
- The buyer agrees to Yahoo's terms and conditions over the internet. See Claim 1, element (c).
- The buyer signs up with Yahoo over the internet. See Claim 1, element (c).
- The Yahoo system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c).
- Yahoo provides the buyer with tutorials and FAQs about its system over the internet. See generally, YAH 1-575.

Analysis:

- The internet is a global communication network. See Claim 1, preamble.
- A "business" is the purchase and sale of goods in an attempt to make a profit. Selling internet advertising space to advertisers to make a profit is a business. Yahoo sells internet advertising space over the internet. Thus, the Yahoo system is a method of doing business over a global communications system. Yahoo conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its terms and services over the internet, accepting payment over the internet, accepting maximum bids from the buyer over the internet, accepting keyword selections over the internet, and providing tutorials and FAQs over the internet. See Claim 1, preamble.

Conclusion:

	<ul style="list-style-type: none"> • Thus, the Yahoo system is a method of doing business over a global communications network.
Claim 15	
(pre) “The method of claim 1”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“wherein the price is determined at least partially upon an offer received from the buyer.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in the Yahoo system, the buyer inputs a maximum bid. See Claim 1, element b. • The buyer’s maximum cost per click is a bid. Yahoo uses the maximum bid as the highest price that the buyer will pay. <ul style="list-style-type: none"> ○ “Unlike other forms of advertising that feature set pricing, Yahoo! Search Marketing allows you to determine how much you’d like to pay, so you’re in control of your costs. With Sponsored Search and Content Match, you pay only when your ad is clicked. You’ll set a bid (the maximum amount you’re willing to pay each time your ad is clicked) and an account daily spending limit to help you keep your costs in check.” YAH 59. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a method of Claim 1 wherein the price is determined at least partially upon an offer received from the buyer. • Receiving a bid from the buyer is receiving an offer from the buyer, since a bid is an offer. Yahoo receives the buyer’s maximum bid from the buyer. The maximum bid is an offer.

	<p>Thus, Yahoo receives an offer from the buyer. The offer from the buyer affects price, since Yahoo uses the maximum bid as the highest price the buyer will pay. Thus, the price is determined at least partially upon an offer received from the buyer.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 18	
<p>(pre) “A method of determining a price of a product using a global communications network, comprising the steps:”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Yahoo accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • The Yahoo system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c). • The buyer’s actual cost falls between the maximum bid and the minimum bid. See Claim 1, element (b). • Yahoo calculates a Quality Index. The Quality Index is based on the keyword’s clickthrough rate and the relevance of the keyword and ad to the search query See Claim 1, element (c). • The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s Quality Index. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communications network. See Claim 1, preamble. • An internet advertisement space is a product, see Claim 1, element a.

	<ul style="list-style-type: none"> • Yahoo uses the global communications network to collect information from buyers, including the maximum bid, keyword selection, and ad text selection. • Yahoo uses that information, which is collected using the internet, to determine the price of the product. It uses the maximum bid as the cap for price. It also uses the keyword and ad text to measure the Quality Index, which in turn affects price. • Thus, the Yahoo system is a method determining a price of a product, internet advertising space, using a global communications network. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “communicating to a buyer via the global communications network, data representing a plurality of products available, said plurality of products including a first product;”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Yahoo describes its internet advertisement space, over the internet. See Claim 1, element a. • Yahoo provides additional examples of its ads and ad formats on its web pages. See Claim 1, element a. • Images describing more than one internet advertisement space are shown on the Yahoo’s web pages. See YAH 102, YAH 125-127. • More than one position is available position is available for the internet advertisement. See YAH 102, YAH 125-127. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communications network. See Claim 1, preamble. • An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product. See Claim 1, element a. • The communications contained in Yahoo’s web pages, described above, contain text and picture representations of internet

	<p>advertising space. See Claim 1, element a. More than one type of advertisement is described, and more than one position for the advertisement is described. The Yahoo web pages show that different advertisements may be purchased for different keywords, and that the advertisements may be in different positions. Thus, they show a plurality of products, including a first product.</p> <ul style="list-style-type: none"> • These communications are intended for the advertiser, who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement space. Thus, Yahoo communicates to the buyer data representing a plurality of products available. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Yahoo system communicates to a buyer via the global communications network, data representing a plurality of products available, said plurality of products including a first product.
<p>(b) “accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined upon a performance of the buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer agrees to Yahoo’s terms and conditions. The terms and conditions state that the buyer shall pay for all charges and fees incurred in connection with each Program. See Claim 1, element (c). • To participate in the Yahoo system, the buyer signs up with Yahoo over the internet. See Claim 1, element (c). • To participate in the Yahoo system, the buyer activates the Yahoo account. See Claim 1, element (c). • To participate in the Yahoo system, the buyer chooses the keyword and creates the ad. See Claim 1, element (c). • Yahoo calculates a Quality Index. The Quality Index is based on the keyword’s clickthrough rate and the relevance of the

<p>being communicated over the global communications network;”</p>	<p>keyword and ad to the search query. See Claim 1, element (c).</p> <ul style="list-style-type: none"> • The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s Quality Index. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. See Claim 1, element (c). • Yahoo accepts the buyer’s agreement to Yahoo’s terms and conditions, as well as the sign up and activation of the account. After the buyer agrees to Yahoo’s terms and conditions and activates the account (among other things), Yahoo begins running the ads on the Yahoo network. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves (1) “accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product,” (2) “at a price to be determined upon a performance of the buyer while participating in a Price-Determining-Activity (PDA),” (3) “said acknowledgement being communicated over the global communications network.” <p><i>price to be determined based upon a performance of the buyer while participating in a price determining activity</i></p> <ul style="list-style-type: none"> • The competitive submission of keywords and ad text is an “activity.” • The buyer’s price is determined based on the performance of the
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buyer while participating in the competitive submission of keywords and ad text. Yahoo's web pages state that the buyer's actual cost per click depends on the buyer's Quality Index, which depends on the relevance of the submitted keywords and ad text. In addition, the buyer's comparative performance on keyword and ad text submission determines price. This is because the Quality Index is a measure of the relevancy of the buyer's ad compared to ads that it competes with, and the Quality Index impacts the cost per click. See Claim 1, element (c). Therefore, the price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text.

- The buyer's actual cost per click is directly related to the buyer's performance while participating in the competitive submission of keywords and ad text, as discussed above. Thus, the price is determined based upon the performance of the buyer while participating in a price determining activity.

accepting acknowledgment from the buyer representing an intent of the buyer to buy the first product

- The buyer's agreement to Yahoo's terms and conditions is an acknowledgment from the buyer representing an intent of the buyer to buy the first product at a price to be determined based on the performance of the buyer at a PDA.
- The terms and conditions state that the buyer shall pay for all charges and fees incurred in connection with each Program. Yahoo's web pages shows that the buyer's actual cost per click is related to the buyer's Quality Index, which depends on the relevance of the submitted keywords and text. In addition, Yahoo's web pages show that the buyer's comparative performance on keyword and ad text submission also determines price. By agreeing to Yahoo's Terms and Conditions, the buyer

	<p>acknowledges that Yahoo will allow the price to be determined based on the performance of the buyer while performing keyword selection and ad creation, as outlined in Yahoo’s web pages.</p> <ul style="list-style-type: none"> • In the alternative, the buyer’s act of signing up, and/or activating the account is the acknowledgment of the intent to buy the product for a price to be determined based upon a performance of the buyer while participating in a price determining activity. Yahoo’s states that the buyer’s actual cost per click is related to the buyer’s Quality Index, which depends on the relevance of the submitted keywords and ad text. In addition, the web pages indicate that the buyer’s comparative performance on keyword and ad text submission also determines price. Thus, the act of signing up, and/or activating the account is that acknowledgment of intent. • Yahoo accepts the buyer’s agreement to Yahoo’s terms and conditions, as well as the sign up and activation of the account. After the buyer agrees to Yahoo’s terms and conditions, signs up, and activates the account (among other things), Yahoo begins running the ads on its network. <p><i>said acknowledgement being communicated over the global communications network</i></p> <ul style="list-style-type: none"> • The buyer agrees to Yahoo’s terms and conditions, signs up, and activates the account over the internet. • The internet is a global communications network. See Claim 1, preamble. Thus, the acknowledgment is communicated over the internet. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(c) “determining the performance of the	<u>Defendant’s Statements and Depictions:</u>

<p>buyer;”</p>	<ul style="list-style-type: none"> • Yahoo calculates a Quality Index. The Quality Index is based on the keyword’s clickthrough rate and the relevance of the keyword and ad to the search query. See Claim 1, element (c). • The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s Quality Index. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. See Claim 1, element (c). • Yahoo accepts the buyer’s agreement to Yahoo’s terms and conditions, as well as the sign up and activation of the account. After the buyer agrees to Yahoo’s terms and conditions and activates the account (among other things), Yahoo begins running the ads on the Yahoo network. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves determining the performance of the buyer. The Yahoo system determines the performance of the buyer by collecting the keyword and ad text selection. • The competitive submission of keywords and ad text is an “activity.” The buyer’s performance is how well the buyer does at this task. Yahoo’s web pages state that Yahoo calculates a Quality Index, from this information, which determines price. The Quality Index depends on the relevance of the submitted keywords and ad text, so it depends on the performance of the
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	<p>buyer. By evaluating the keyword and the ad text, Yahoo determines the performance of the buyer.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>“(d) and assigning a price to the product, said price being scaled to the performance of the buyer”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Yahoo calculates a Quality Index. The Quality Index is based on the keyword’s clickthrough rate and the relevance of the keyword and ad to the search query. See Claim 1, element (c). • The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s Quality Index. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. See Claim 1, element (c). • Yahoo accepts the buyer’s agreement to Yahoo’s terms and conditions, as well as the sign up and activation of the account. After the buyer agrees to Yahoo’s terms and conditions and activates the account (among other things), Yahoo begins running the ads on the Yahoo network. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • Yahoo assigns a price, since it states that it calculates an actual cost per click. • A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer.

	<p>Under the Yahoo system, the price is relative to the performance of the buyer in the competitive submission of ad text and keyword selection.</p> <ul style="list-style-type: none"> • This is because the Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in a lower price. Less relevant ads receive a higher Quality Index, resulting in a higher price. • The buyer’s actual cost per click is also directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. As the quality of other competitors increases, the buyer’s actual cost per click increases. Thus, Yahoo assigns a price to the product that is scaled to the performance of the buyer. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 20	
(pre) “The method of claim 18, further comprising the step of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “accepting payment information from the buyer over the global communications network.”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • Yahoo collects billing information from the buyer. See Claim 2, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves accepting payment information from the buyer over the global communications network.

	<ul style="list-style-type: none"> • Billing information is payment information. The Yahoo system accepts payment information including billing address and credit card information over the internet. The internet is a global communications network. See Claim 1, preamble. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 21	
(pre) “The method of claim 18, further comprising the step of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price is dependent at least partially upon a bid selected by the buyer.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in the Yahoo system, the buyer selects and inputs the maximum bid. See Claim 1, element b. • The buyer’s maximum cost per click is a bid. See Claim 15, element a. • Yahoo uses the maximum bid as the highest price the buyer will pay. See Claim 15, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a method of Claim 1 wherein the price is determined at least partially upon a bid received from the buyer. • Yahoo indicates that the maximum cost per click is a bid. The bid from the buyer affects price, since Yahoo uses the maximum bid as the highest price the buyer will pay. The bid is selected by the buyer, since the buyer chooses and inputs the maximum bid. Thus, the price is determined at least partially upon a bid selected by the buyer. <p><u>Conclusion:</u></p>

	<ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 22	
(pre) “The method of claim 18, further comprising the step of”	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <u>Analysis:</u> <ul style="list-style-type: none"> • See Analysis for Claim 18. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price is determined at least partially upon results of an auction.”	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • The Yahoo system involves an auction. See Claim 13, element a. • The buyer’s maximum bid is the highest that the buyer can be charged per click. See Claim 13, element a. <u>Analysis:</u> <ul style="list-style-type: none"> • An auction is the sale of property based on bids. The Yahoo system involves the sale of internet advertising space based on bids. The buyer’s maximum bid is the buyer’s auction bid. It affects price because it is the highest that the bidder can be charged. Thus, the price is determined at least partially upon participation of the buyer in an auction. Thus, the price is determined at least partially upon the results of an auction. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 23	
(pre) “The method of claim 18, further comprising the step of”	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <u>Analysis:</u> <ul style="list-style-type: none"> • See Analysis for Claim 18. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price	<u>Defendants’ Statements and Depictions:</u>

<p>is determined at least partially upon an offer received from the buyer.”</p>	<ul style="list-style-type: none"> • See Claim 15, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 15, element a.
Claim 30	
<p>(pre) “A system for conducting e-commerce over a global communications network, comprising a computer server having access to the global communications network, and being programmed to:”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Yahoo!’s method of doing business, See YAH 1-575. • Yahoo sells online advertising space to advertisers. See Claim 1, preamble. • Yahoo describes the product, internet advertisement space, over the internet. See Claim 1, element (a). • Yahoo accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • Yahoo accepts payment information over the internet. See Claim 2. • The buyer agrees to Yahoo’s terms and conditions over the internet. See Claim 1, element (c). • The buyer signs up with Yahoo over the internet. Se Claim 1, element (c). • The Yahoo system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c). • Yahoo provides the buyer with tutorials and FAQs about it system over the internet. See generally, YAH 1-575. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communication network. See Claim 1, preamble. • Yahoo is a system that sells online advertising space over the internet. Thus, it is a system for conducting e-commerce over a

	<p>global communications network.</p> <ul style="list-style-type: none"> • Yahoo uses a computer server having access to the global communications that is programmed to implement its system. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “communicate to a buyer via the global communications network, data representing a plurality of products, said plurality of products including a first product;”</p>	<p>See Claim 18, element a.</p>
<p>(b) “accept acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined dependent on a performance of the buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement being communicated over the global</p>	<p>See Claim 18, element b.</p>

communications network;”	
“(c) determining the performance of the buyer based upon data received over the global communications network;”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 18(c) • The Yahoo system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element c. • Yahoo calculates a Quality Index. The Quality Index is based on the keyword’s clickthrough rate and the relevance of the keyword and ad to the search query See Claim 1, element (c). • The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in lower price. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s Quality Index. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves determining the performance of the buyer based upon the data received over the global communications network. • The data received is the keyword selection and ad text, which the Yahoo system receives from the buyer over the internet. The internet is a global communications network. See Claim 1, preamble. • Determining the performance of the buyer based on the keyword selection and ad text is determining the performance of the buyer

	<p>based upon the data received over the global communications network.</p> <ul style="list-style-type: none"> • Yahoo determines the buyer’s performance based on the keyword selection and ad text. The Quality Index depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher Quality Index, resulting in a lower price. The buyer’s actual cost per click depends on the buyer’s Quality Index. The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the Quality Index is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the Quality Index impacts the cost per click. • Thus, Yahoo determines the performance of the buyer based on the keyword selection and ad text. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>“and (d) assign a price to the product, said price being scaled to the performance of the buyer.”</p>	<p>See Claim 18, element d.</p>

IAC

Claim language	Ask.com
Claim 1	
Pre “A method of doing business over a global communications network comprising the steps:”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Ask Sponsored Listing’s (ASL’s) method of doing business, see ASK 1-199. • ASL sells online advertising space to advertisers. <ul style="list-style-type: none"> ○ “What is Ask Sponsored Listings? Ask Sponsored Listings (ASL) is a pay-per-click advertising solution. With ASL, advertisers can effectively purchase, manage and optimize keyword-targeted and/or contextually targeted campaigns across the ASL network.” ASK 25. • ASL describes the product, internet advertisement space, over the internet. See Claim 1, element (a). • To participate in the ASL system, the buyer inputs the maximum CPC (or bid). ASL accepts the buyer’s maximum CPC over the internet. See Claim 1, element b. • ASL accepts payment information over the internet. See Claim 2. • The buyer agrees to ASL terms and conditions over the internet. See Claim 1, element (c). • The buyer registers with ASL over the internet. See Claim 1, element (c). • The ASL system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c). • ASL provides the buyer with help and FAQs about it system over the internet. See generally, ASK 1-199. <p><u>Analysis:</u></p>

	<ul style="list-style-type: none"> • A “Global Communication Network” includes a network that connects computers around the world. The internet is a global communication network because it connects and allows communications between computers and computers networks around the world. <ul style="list-style-type: none"> ○ See also Claim 14, which states that the internet is a global communications network. • A “business” is the purchase and sale of goods in an attempt to make a profit. Selling internet advertising space to advertisers to make a profit is a business. ASL uses its system to sell internet advertising space over the internet. ASL conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its terms and services over the internet, accepting payment over the internet, accepting maximum bids from the buyer over the internet, accepting keyword selections over the internet, and providing help and FAQs over the internet. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>“communicating to a buyer via the global communications network, a description of the product”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • ASL describes its internet advertisement space over the internet. <ul style="list-style-type: none"> ○ “About our listings. <ul style="list-style-type: none"> ▪ The advertisement you create when you set up an ASL campaign is called a “listing.” A listing is made up of the following elements that are displayed in the search results page: ▪ Here’s a sample Listing. ▪ Open your own Franchise ▪ Find out how millions of people are opening Franchises. ▪ www.ask.com/franchise.php

- 1. Title
 - 2. Description
 - 3. Display URL . . .
 - Your listing appears in sites across our network.
- ASK 4.

Analysis:

- This element involves (1) communicating to a buyer a description of the product, a (2) via the global communications network

Communicating to a buyer a description of a product

- An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product.
- The communications contained in ASL's web pages, described above, contain text and picture representations of internet advertising space. These communications are intended for the advertiser, who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement spaces.
- Thus, ASL communicates to the buyer a description of the product.

Via the global communications system

- The internet is a global communications network since it connects computers around the world.
- The ASL system shows its web pages over the internet. The web pages that are shown over the internet include those that contain text and pictorial descriptions the internet advertising space that ASL offers.

Conclusion:

- Therefore, the ASL system involves communicating to the buyer

	<p>a description of the product via the global communication network.</p>
<p>(b) [price range] “accepting a first request from the buyer to buy the product for a price to be determined within a price range;”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate, the buyer inputs a maximum CPC (or bid). ASL accepts the buyer’s maximum bid over the internet. <ul style="list-style-type: none"> ○ “The max CPC is the maximum amount you are willing to pay for a click on your ad.” ASK 19. ○ “Set a maximum CPC that represents the maximum you are willing to pay for each Sponsored Listing click. ASL uses that Max CPC, along with your listing’s click-through-rate, to determine placement for your listings.” ASK 14. • ASL sets a minimum CPC, or bid. <ul style="list-style-type: none"> ○ “The Sponsored Listing program automatically sets a minimum CPC for each keyword you select. This minimum CPC fluctuates and depends, among other factors, on the ongoing Max CPC rates selected by you and other advertisers.” ASK 46. <ul style="list-style-type: none"> ▪ “Overview ▪ Keyword Pricing: CPC Based ▪ Minimum Bid: Global minimum = \$0.5 = where there is no reserve price established. The minimum CPC may be higher than the global minimum to ensure placement. ▪ Bid Model: Keyword auctions based on eCPM ranking (CPC x CTR) ▪ Reserve Prices: For the most commercial keyword, minimum CPC to guarantee top placement on the page. Reserve Prices will be based on market intelligence and existing Ask.com CPCs. ASK 7.

- The buyer’s actual cost falls between the minimum bid and the maximum bid.
 - “You will be charged on a “cost per click” (CPC) basis, meaning your account is charged each time a user clicks on your ad.
 - For keyword targeting, you will be charged the minimum amount necessary, in one cent (\$0.01) increments, to maintain your ad at the desired highest ranking, until your max CPC is reached. Thereafter, you will continue to pay your max CPC even if you ad has been outranked by ads of competing advertisers.” ASK 28.

Analysis:

- This element involves (1) accepting a “request from the buyer to buy the product”, where (2) the price is “to be determined within a price range”. We consider these in reverse order.

The price of the product is “to be determined within a price range.”

- An internet advertising space is a product, as discussed in Claim 1, element a. Under the ASL system, the price falls within a price range between the maximum CPC and the minimum CPC. As described above, ASL accepts a maximum bid, which is a price that is input by the buyer. The minimum bid is assigned by ASL. The buyer’s actual cost falls between the maximum and the minimum CPC. Thus, the price of the product is to be determined within a price range.

ASL “accepts a request from the buyer to buy the product for a price”

- Accepting something that the buyer asks for is accepting a “request from the buyer” since a “request” is something asked for. The buyer’s maximum CPC is a request from the buyer to buy the product at a price to be determined within a price range, since ASL’s web pages state that the price of the internet

	<p>advertisement space will fall between the maximum and minimum CPC. When the buyer inputs a maximum CPC, the buyer is aware that ASL will determine the price between the minimum bid and the maximum bid.</p> <ul style="list-style-type: none"> • ASL accepts the request (if it is in the proper form), and, by doing so, allows that bid to participate in the continuing auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the ASL system accepts a request from the buyer to buy the product for a price to be determined within a price range.
<p>(c) “accepting a second request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA);”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer agrees to ASL’s terms and conditions over the internet. The terms and conditions state that the Program operates as described in the Help section and FAQ on its website. <ul style="list-style-type: none"> ○ “The Program operates as described in the Help section of the Program client console at https://secure.sponsoredlistings.ask.com/help/faq. Please refer to the Help section for any questions You may have about the Program.” ASK 197-199. • To participate in the ASL system, the buyer registers with ASL over the internet. <ul style="list-style-type: none"> ○ “Registration is required so that we recognize you after you have set up your account.” ASK 168. • To participate in the ASL system, the buyer chooses the keyword and creates the ad. The ASL system collects data from the buyer including the keyword and ad text over the internet. <ul style="list-style-type: none"> ○ “Selecting appropriate keywords for your campaign is one of the most important components of building a successful keyword advertising campaign. Without highly targeted keywords and keyword phrases your ads will not be displayed or will be targeted to the wrong

	<p>audience and you may spend your budget on clicks that will not convert to sales.” ASK 108.</p> <ul style="list-style-type: none"> ○ “Create your ASL campaign and select keywords you would like to target for your listings.” ASK 14. ○ “Make sure the keywords are relevant to your site. Selecting the right keywords is key to attracting customers as they are more likely to spend more time and more money on your site if they find what they are looking for right away.” ASK 15. ○ ASK 81 shows that buyers create an advertisement. ● The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element (c). <ul style="list-style-type: none"> ○ “You will be charged on a “cost per click” (CPC) basis, meaning your account is charged each time a user clicks on your ad. <ul style="list-style-type: none"> ▪ For keyword targeting, you will be charged the minimum amount necessary, in one cent (\$0.01) increments, to maintain your ad at the desired highest ranking, until your max CPC is reached. Thereafter, you will continue to pay your max CPC even if you ad has been outranked by ads of competing advertisers.” ASK 28. ○ “Overview <ul style="list-style-type: none"> ▪ Keyword Pricing: CPC Based ▪ Minimum Bid: Global minimum = \$0.05 = where there is no reserve price established. The minimum CPC may be higher than the global minimum to ensure placement. ▪ Bid Model: Keyword auctions based on eCPM
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	<p>ranking (CPC x CTR)</p> <ul style="list-style-type: none"> ▪ Reserve Prices: For the most commercial keyword, minimum CPC to guarantee top placement on the page. Reserve Prices will be based on market intelligence and existing Ask.com CPCs. ASK 7. <ul style="list-style-type: none"> ○ “The higher your click through rate, the lower CPC you will pay for a given position.” ASK 145. • ASL accepts the buyer’s agreement to ASL’s terms and conditions over the internet, as well as the registration of the account. After the buyer agrees to ASL’s terms and conditions and registers (among other things), ASL begins running ads on the ASL network. <ul style="list-style-type: none"> ○ “The Program operates as described in the Help section of the Program client console at https://secure.sponsoredlistings.ask.com/help/faq. Please refer to the Help section for any questions You may have about the Program.” ASK 197-199. • ASL accepts the buyer’s maximum bid over the internet. See Claim 1, element b. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves (1) accepting a “request from the buyer” to allow (2) “the price to be determined based upon a performance of the buyer while participating in a price determining activity.” We consider these in reverse order. <i>“price to be determined based upon a performance of the buyer while participating in a price determining activity”</i> • The competitive submission of keywords and ad text is an “activity.” • The buyer’s price is determined based on the performance of the buyer while participating in the competitive submission of
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keyword and ad text. ASL's web pages state that the buyer's actual cost per click depends on the buyer's keyword and ad text. Therefore, the price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text.

“accepting a second request from the buyer”

- The buyer's agreement to ASL's terms and conditions is a request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. This is because the terms and conditions state the Program operates as described in the Help section and FAQ on its website. By agreeing to ASL's Terms and Conditions, the buyer requests that ASL allow the price to be determined based on the performance of the buyer while performing keyword and ad text selection, as outlined in ASL's web pages.
- In the alternative, the buyer's act of registering the account is the request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. ASL's web pages state that the buyer's actual cost per click is related to the buyer's keyword selection and keyword ad text. Thus, the act of registering is a request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity.
- ASL accepts the buyer's agreement to ASL's terms and conditions over the internet, as well as the registration. After the buyer agrees to ASL's terms and conditions and registers the account (among other things), ASL begins running ads on the ASL network.

Conclusion:

	<ul style="list-style-type: none"> • Therefore, the ASL system accepts a second request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA).
<p>(d) [receiving performance data over internet] “receiving data from the buyer over the global communications network, said data representing the performance of the buyer during the PDA;”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The ASL system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • ASL accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s, ad text and keyword selection. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • As discussed above, the performance of the buyer during the PDA is the buyer’s selection of keyword and advertising text. Data representing the buyer’s performance consists of the keyword and the ad text. This data is received by ASL from the buyer over the internet, which is a global communications network. See analysis for Claim 1, preamble. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(e) “and determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The ASL system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • ASL accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection, as

<p>performance of the buyer”</p>	<p>well as other advertisers’ bid for the same keyword. See Claim 1, element (c).</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves (1) determining the price of the product based at least partially upon the data received, (2) said price being within the range and scaled to the performance of the buyer. <p><i>Determining the price of the product based at least partially upon the data received</i></p> <ul style="list-style-type: none"> • The data received is the keyword selection and ad text, which the ASL system receives from the buyer over the internet. • Determining the price of the product at least partially on the keyword selection and ad text is determining the product based at least partially upon the data received. • ASL determines the price of the product at least partially on the keyword selection and ad text . This is because the actual cost per click depends on the buyer’s keyword and ad text selection. • Thus, ASL determines the price of the product at least partially on the data received: the ad text and keyword selection. <p><i>Said price being within the price range and scaled to the performance of the buyer</i></p> <ul style="list-style-type: none"> • Under the ASL system, the price falls within a price range between the maximum bid and the minimum bid. As described above, ASL accepts a maximum bid, which is a price that is input by the buyer. The minimum bid set by ASL. The buyer’s actual cost falls between the maximum bid and the minimum bid. Thus, the price is to be determined within a price range. • A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer. Under the ASL system, the price is relative or proportionate to
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	<p>the performance of the buyer in the competitive submission of ad text and keyword selection. The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s keyword and ad text selection. See Claim 1, element (c).</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the ASL system involves determining the price of the product based at least partially upon the data received, said price being within the range and scaled to the performance of the buyer.
Claim 2	
<p>(pre) the method of claim 1, further comprising the step of</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>“(a) accepting payment information from the buyer over the global communications network”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • ASL collects billing information from the buyer. <ul style="list-style-type: none"> ○ See ASK 54, which discusses billing information that is accepted by ASL. ○ See also ASK 84, 91, 97, which discusses credit card information. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves accepting payment information from the buyer over the global communications network. • Billing information is payment information. The ASL system accepts payment information including billing address, and credit card information over the internet. The internet is a global communications network. See Claim 1, preamble.

	<p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 9	
(pre) “The method of claim 1,”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“(a) wherein the PDA requires participation of at least one participant in addition to the buyer.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The ASL system involves more than one buyer. This is indicated by the fact that buyers compete against each other for ad space. <ul style="list-style-type: none"> ○ “For keyword targeting, you will be charged the minimum amount necessary, in one cent (\$0.01) increments, to maintain your ad at the desired highest ranking, until your max CPC is reached. Thereafter, you will continue to pay your max CPC even if you ad has been outranked by ads of competing advertisers.” ASK 28. • In order to determine the price, ASL compares the rank of more than one buyer. <ul style="list-style-type: none"> ○ “For keyword targeting, you will be charged the minimum amount necessary, in one cent (\$0.01) increments, to maintain your ad at the desired highest ranking, until your max CPC is reached. Thereafter, you will continue to pay your max CPC even if you ad has been outranked by ads of competing advertisers.” ASK 28. • The buyer’s actual cost per click is directly related to the buyer’s

	<p>comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element (c).</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a further step of wherein the PDA requires the participation of at least one participant in addition to the buyer. • The ASL system involves more than one buyer. The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The PDA requires the participation of at least one participant in addition to the buyer, because the buyer’s comparative performance on keyword and ad text submission determines price. ASL’s web pages show that the cost per click depends on the buyer’s ad text and keyword selection. In order for ASL to compare the performance, at least one participant in addition to the buyer is required. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the PDA in this instance, the competitive submission of keywords and ad text, requires the participation of more than one buyer.
Claim 10	
(pre) “The method as in claim 9, further comprising”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 9. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 9. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “the step of determining the price based at least	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The ASL system involves more than one buyer. See Claim 9, element a.

<p>partially upon a competition between the buyer and at least one participant using the PDA.”</p>	<ul style="list-style-type: none"> • To participate in the ASL system, the buyer chooses the keyword and creates the ad. The ASL system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element c. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element c. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element requires the step of determining the price based at least partially upon a competition between the buyer and at least one participant using the PDA. • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. • Therefore, the price is determined based at least partially upon a competition between the buyer and at least one participant using the PDA. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>Claim 11</p>	
<p>(pre) “The method as in claim 10, wherein the at least one participant is a second buyer, and further comprising the steps of”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 10. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 10. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.

<p>(a) “accepting a second request from the second buyer to buy the product for a second price to be determined within the price range, and”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • There is more than one buyer in the ASL system. See Claim 9, element a. • To participate in the ASL system, each buyer inputs the maximum bid. See Claim 1, element b. • The minimum bid is set by ASL. See Claim 1, element b. • Each buyer’s actual cost falls between the maximum bid and the minimum bid. See Claim 1, element b. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element requires accepting a second request from a second buyer for a second price to be determined within the price range. <p><i>Second buyer:</i></p> <ul style="list-style-type: none"> • There is more than one buyer in the ASL system. This is indicated by ASL’s web pages, which states that ads compete against other ads. Since there is more than one buyer, there is a second buyer. <p><i>accepting a second request from the second buyer to buy the product for a second price to be determined within the price range</i></p> <ul style="list-style-type: none"> • To participate in the ASL system, each buyer inputs a maximum bid. Thus, the second buyer inputs a second maximum bid. Under the ASL system, each buyer’s price falls within a price range between that buyer’s maximum bid and minimum bid. The second buyer’s actual cost falls between the second buyer’s maximum bid and the minimum bid. Thus, the second buyer’s price is to be determined within a price range between the second buyer’s maximum bid and the minimum bid. • Accepting something that the second buyer asks for is accepting a second request from the second buyer since a “request” is something asked for. The second buyer’s maximum bid is a request from the second buyer to buy the product at a price to be
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	<p>determined within a price range, since ASL’s web pages state that the price will fall between the second buyer’s minimum and maximum bid. When the second buyer inputs a maximum bid, the second buyer is aware that ASL will determine the price between the minimum bid and the maximum bid. ASL accepts the second buyer’s request (if it is in the proper form), and, by doing so, allows that bid to participate in the continuing auction.</p> <ul style="list-style-type: none"> • Thus, the ASL system accepts a second request from the second buyer to buy the product for a second price to be determined within the price range. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(b) “determining said second price based at least partially upon the competition.”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The ASL system involves more than one buyer. See Claim 9, element a. • To participate in the ASL system, <u>each</u> buyer chooses the keyword and ad text. The ASL system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element (c). • To participate in the ASL system, the buyer inputs a maximum bid. See Claim 1, element (b). <p><u>Analysis:</u></p> <p>This element requires the step of determining the second price based at least partially upon the competition.</p> <ul style="list-style-type: none"> • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c.

	<ul style="list-style-type: none"> • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. The buyer’s price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text. ASL’s web pages state that the buyer’s actual cost per click depends on the buyer’s keyword and ad text. Therefore, the price is determined based on the competition of the buyer and other buyers while submitting keywords and ad text. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 12	
(pre) “The method of claim 1,”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the steps of accepting the first request from the buyer, accepting the second request from the buyer, and receiving the performance data from the buyer, are performed by a	<p><u>Defendant’s Depictions and Statements:</u></p> <ul style="list-style-type: none"> • To participate in the ASL system, the buyer inputs a maximum bid. See Claim 1, element (b). • The buyer agrees to ASL’s terms and conditions over the internet. The terms and conditions state that the Program operates as described in the Help section and FAQ on its website. See Claim 1, element (c). • To participate in the ASL system, the buyer registers with ASL over the internet. See Claim 1, element (c). <p><u>Analysis:</u></p>

<p>master controller.”</p>	<ul style="list-style-type: none"> • The ASL system accepts a first request from the buyer, a second request from the buyer, and receives performance data from the buyer. See Analysis Claim 1(a). • ASL’s system uses computer software with routines that carries out control over routines that accept a first request from the buyer, a second request from the buyer, and performance data from the buyer. This constitutes the master controller. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>Claim 13</p>	
<p>(pre) “The method of claim 1,”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) "wherein the price is determined at least partially upon participation of the buyer in an auction.”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The ASL system involves bidding for internet advertisement space. <ul style="list-style-type: none"> ○ “Overview <ul style="list-style-type: none"> ▪ Keyword Pricing: CPC Based ▪ Minimum Bid: Global minimum = \$0.05 = where there is no reserve price established. The minimum CPC may be higher than the global minimum to ensure placement. ▪ Bid Model: Keyword auctions based on eCPM ranking (CPC x CTR) ▪ Reserve Prices: For the most commercial keyword, minimum CPC to guarantee top placement on the page. Reserve Prices will be

based on market intelligence and existing Ask.com CPCs. ASK 7.

- “You will be charged on a “cost per click” (CPC) basis, meaning your account is charged each time a user clicks on your ad.
 - For keyword targeting, you will be charged the minimum amount necessary, in one cent (\$0.01) increments, to maintain your ad at the desired highest ranking, until your max CPC is reached. Thereafter, you will continue to pay your max CPC even if you ad has been outranked by ads of competing advertisers.” ASK 28.
- The buyer’s maximum bid is the highest that the buyer can be charged per click.
 - “You will be charged on a “cost per click” (CPC) basis, meaning your account is charged each time a user clicks on your ad.
 - For keyword targeting, you will be charged the minimum amount necessary, in one cent (\$0.01) increments, to maintain your ad at the desired highest ranking, until your max CPC is reached. Thereafter, you will continue to pay your max CPC even if you ad has been outranked by ads of competing advertisers.” ASK 28.

Analysis:

- An auction is the sale of property based on bids. The ASL system involves the sale of internet advertising space based on bids. The buyer’s maximum bid is the buyer’s auction bid. It affects price because it is the highest that the bidder can be charged. Thus, the price is determined at least partially upon participation of the buyer in an auction.

	<p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 14	
(pre) “The method of claim 1”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the global communications network is the Internet.”	<p><u>Defendant’s Descriptions and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Ask Sponsored Listing’s (ASL’s) method of doing business, see ASK 1-199. • ASL sells online advertising space to advertisers. See Claim 1, preamble. • ASL describes its internet advertisement space over the internet. See Claim 1, element a. • To participate in the ASL system, the buyer inputs a maximum bid. ASL accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • ASL accepts payment information over the internet. See Claim 2. • The buyer agrees to ASL terms and conditions over the internet. See Claim 1, element (c). • To participate in the ASL system, the buyer registers with ASL over the internet. See Claim 1, element (c). • . The ASL system collects data from the buyer including the keyword over the internet. See Claim 1, element (c). • ASL provides the buyer with help and FAQs about it system over the internet. See generally, ASK 1-199. <p><u>Analysis:</u></p>

	<ul style="list-style-type: none"> • The internet is a global communication network. See Claim 1, preamble. • A “business” is the purchase and sale of goods in an attempt to make a profit. Selling internet advertising space to advertisers to make a profit is a business. ASL sells internet advertising space over the internet. Thus, the ASL system is a method of doing business over a global communications system. ASL conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its terms and conditions over the internet, accepting payment over the internet, accepting maximum bids from the buyer over the internet, accepting keyword selections over the internet, and providing help and FAQs over the internet. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the ASL system is a method of doing business over a global communications network.
Claim 15	
(pre) “The method of claim 1”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“wherein the price is determined at least partially upon an offer received from the buyer.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in the ASL system, the buyer inputs a maximum bid. See Claim 1, element b. • The buyer’s maximum cost per click is a bid. ASL uses the maximum bid as the highest price that the buyer will pay. <ul style="list-style-type: none"> ○ “Overview <ul style="list-style-type: none"> ▪ Keyword Pricing: CPC Based

- Minimum Bid: Global minimum = \$0.05 = where there is no reserve price established. The minimum CPC may be higher than the global minimum to ensure placement.
 - Bid Model: Keyword auctions based on eCPM ranking (CPC x CTR)
 - Reserve Prices: For the most commercial keyword, minimum CPC to guarantee top placement on the page. Reserve Prices will be based on market intelligence and existing Ask.com CPCs. ASK 7.
- “You will be charged on a “cost per click” (CPC) basis, meaning your account is charged each time a user clicks on your ad.
- For keyword targeting, you will be charged the minimum amount necessary, in one cent (\$0.01) increments, to maintain your ad at the desired highest ranking, until your max CPC is reached. Thereafter, you will continue to pay your max CPC even if you ad has been outranked by ads of competing advertisers.” ASK 28.

Analysis:

- This claim involves a method of Claim 1 wherein the price is determined at least partially upon an offer received from the buyer.
- Receiving a bid from the buyer is receiving an offer from the buyer, since a bid is an offer. ASL receives the buyer’s maximum bid, or offer, from the buyer. The offer from the buyer affects price, since ASL uses the maximum bid as the highest price the buyer will pay. Thus, the price is determined at least partially upon an offer received from the buyer.

	<p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 18	
<p>(pre) “A method of determining a price of a product using a global communications network, comprising the steps:”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • ASL accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • The ASL system collects data from the buyer including the keyword over the internet. See Claim 1, element (c). • The buyer’s actual cost falls between the maximum bid and the minimum bid. See Claim 1, element b. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element (c). • ASL calculates a click-through rate over the internet. The buyer’s actual cost per click is related to the click through rate. <ul style="list-style-type: none"> ○ “Set a maximum CPC that represents the maximum you are willing to pay for each Sponsored Listing click. ASL uses that Max CPC, along with your listing’s click-through-rate, to determine placement for your listings.” ASK 14. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communications network. See Claim 1, preamble. • An internet advertisement space is a product, see Claim 1, element a. • ASL uses the global communications network to collect information from buyers, including the maximum bid, keyword selection, and ad text selection. It also calculates a click-through rate. ASL uses that information, which is collected using the

	<p>internet, to determine the price of the product. ASL uses the maximum bid as the cap for price. The keyword, click-through rate, ad text, and bid also affect price.</p> <ul style="list-style-type: none"> • Thus, the ASL system is a method determining a price of a product, internet advertising space, using a global communications network. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “communicating to a buyer via the global communications network, data representing a plurality of products available, said plurality of products including a first product;”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • ASL describes its internet advertisement space, over the internet. See Claim 1, element a. • ASL provides additional examples of its ads on its web pages. See Claim 1, element a. • ASL’s web pages describe the existence of more than one internet advertisement space. <ul style="list-style-type: none"> ○ “Placement of ads on the Ask Sponsored listings (ASL) network may vary across the ASL network according to the following factors . . .” ASK 27. • More than one position is available position is available for the internet advertisement. <ul style="list-style-type: none"> ○ See ASK 161. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communications network. See Claim 1, preamble. • An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product. See Claim 1, element a. • The communications contained in ASL’s web pages, described above, contain text and picture representations of internet advertising space. See Claim 1, element a. More than one type

	<p>of advertisement is described, and more than one position for the advertisement is described. The ASL web pages show that different advertisements may be purchased for different keywords, and that the advertisements may be in different positions. Thus, they show a plurality of products, including a first product.</p> <ul style="list-style-type: none"> • These communications are intended for the advertiser, who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement space. • Thus, ASL communicates to the buyer data representing a plurality of products available. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the ASL system communicates to a buyer via the global communications network, data representing a plurality of products available, said plurality of products including a first product.
<p>(b) “accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined upon a performance of the buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer agrees to ASL’s terms and conditions over the internet. See Claim 1, element (c). • To participate in the ASL system, the buyer registers with ASL over the internet. See Claim 1, element (c). • To participate in the ASL system, the buyer registers with ASL. See Claim 1, element (c). • To participate in the ASL system, the buyer inputs a maximum bid. ASL accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s bid, ad text, and keyword selection.

<p>being communicated over the global communications network;”</p>	<p>See Claim 1, element (c).</p> <ul style="list-style-type: none"> ASL calculates a click-through rate over the internet. The buyer’s actual cost per click is related to the click through rate. See Claim 18, preamble. ASL accepts the buyer’s agreement to ASL’s terms and conditions over the internet, as well as the registration of the account. After the buyer agrees to ASL’s terms and conditions and registers the account (among other things), ASL begins running ads on the ASL network. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> This element involves (1) “accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product,” (2) “at a price to be determined upon a performance of the buyer while participating in a Price-Determining-Activity (PDA),” (3) “said acknowledgement being communicated over the global communications network.” <p><i>price to be determined based upon a performance of the buyer while participating in a price determining activity</i></p> <ul style="list-style-type: none"> The competitive submission of keywords and ad text is an “activity.” It is a price determining activity because ASL’s web pages state that the buyer’s price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text. <p><i>accepting acknowledgment from the buyer representing an intent of the buyer to buy the first product</i></p> <ul style="list-style-type: none"> The buyer’s agreement to ASL terms and conditions is acknowledgment from the buyer representing an intent of the buyer to buy the product. This is because the terms and conditions state that the Program operates as described in the Help section and FAQ on its website. By agreeing to ASL’s terms and conditions, the buyer acknowledges that ASL will
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	<p>allow the price to be determined based on the performance of the buyer while performing keyword and ad text selection, as outlined in ASL’s web pages.</p> <ul style="list-style-type: none"> • In the alternative, the buyer’s act of registering with ASL is the acknowledgment of the intent to buy the product for a price to be determined based upon a performance of the buyer while participating in a price determining activity. ASL’s web pages state that the cost will depend on the buyer’s ad text and keyword selection. Thus, the act of registering the account is the acknowledgment of intent. • ASL accepts the buyer’s agreement to ASL’s terms and conditions over the internet, as well as the registration of the account. After the buyer agrees to ASL’s terms and conditions and registers the account (among other things), ASL begins running ads on the ASL network. <p><i>said acknowledgement being communicated over the global communications network</i></p> <ul style="list-style-type: none"> • The buyer agrees to ASL’s terms and conditions, registers the account, creates an account, and turns on the ad over the internet. • The internet is a global communications network. See Claim 1, preamble. Thus, the acknowledgment is communicated over the internet. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(c) “determining the performance of the buyer;”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element c.

	<ul style="list-style-type: none"> ASL calculates a click-through rate over the internet. The buyer’s actual cost per click is related to the click through rate. See Claim 18, preamble. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> This element involves determining the performance of the buyer. The ASL system determines the performance of the buyer by collecting the keyword and ad text and comparing it to the other buyers. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> Thus, this element is satisfied.
<p>(d) “and assigning a price to the product, said price being scaled to the performance of the buyer”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> ASL assigns an actual cost per click. <ul style="list-style-type: none"> “Our pricing scheme is very straightforward. <ul style="list-style-type: none"> You’ll be charged on a cost-per-click(CPC) basis. This means you will only be charged after a prospective customer clicks on your listing and visits your web site. CPCs vary based on the targeting options you choose for your listings, your Max CPC and market factors. See pricing for more information. ASK 4. “Overview <ul style="list-style-type: none"> Keyword Pricing: CPC Based Minimum Bid: Global minimum = \$0.05 = where there is no reserve price established. The minimum CPC may be higher than the global minimum to ensure placement. Bid Model: Keyword auctions based on eCPM ranking (CPC x CTR) Reserve Prices: For the most commercial keyword, minimum CPC to guarantee top placement on the page. Reserve Prices will be

	<p>based on market intelligence and existing Ask.com CPCs. ASK 7.</p> <ul style="list-style-type: none"> • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element c. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • ASL assigns a price, since it states that it calculates an actual cost per click. • A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer. Under the ASL system, the price is relative to the performance of the buyer in the competitive submission of ad text and keyword selection. • Thus, ASL assigns a price to the product that is scaled to the performance of the buyer. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 20	
(pre) “The method of claim 18, further comprising the step of	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “accepting payment information from the buyer over the global communications	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • ASL collects billing information from the buyer. See Claim 2, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves accepting payment information from the

network.”	<p>buyer over the global communications network.</p> <ul style="list-style-type: none"> • Billing information is payment information. The ASL system accepts payment information including billing address, and credit card information over the internet. The internet is a global communications network. See Claim 1, preamble. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 21	
(pre) “The method of claim 18, further comprising the step of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price is dependent at least partially upon a bid selected by the buyer.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in the ASL system, the buyer inputs a maximum bid. See Claim 1, element b. • The buyer’s maximum cost per click is a bid. ASL uses the maximum bid as the highest price that the buyer will pay. See Claim 15, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a method of Claim 1 wherein the price is determined at least partially upon an offer received from the buyer. • The maximum bid is a bid selected by the buyer. It is selected by the buyer, since the buyer chooses and inputs the maximum bid. ASL uses the buyer’s maximum bid from the buyer as the highest price the buyer will pay. Thus, the price is determined at least partially upon an offer received from the buyer. <p><u>Conclusion:</u></p>

	<ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 22	
(pre) “The method of claim 18, further comprising the step of”	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <u>Analysis:</u> <ul style="list-style-type: none"> • See Analysis for Claim 18. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price is determined at least partially upon results of an auction.”	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • The ASL system involves bidding for internet advertisement space. See Claim 13, element a. • The buyer’s maximum bid is the highest that the buyer can be charged per click. See Claim 13, element a. <u>Analysis:</u> <ul style="list-style-type: none"> • An auction is the sale of property based on bids. The ASL system involves the sale of internet advertising space based on bids. The buyer’s maximum bid is the buyer’s auction bid. It affects price because it is the highest that the bidder can be charged. Thus, the price is determined at least partially upon participation of the buyer in an auction. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 23	
(pre) “The method of claim 18, further comprising the step of”	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <u>Analysis:</u> <ul style="list-style-type: none"> • See Analysis for Claim 18. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price	<u>Defendants’ Statements and Depictions:</u>

<p>is determined at least partially upon an offer received from the buyer.”</p>	<ul style="list-style-type: none"> • See Claim 15, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 15, element a.
<p>Claim 30</p>	
<p>(pre) “A system for conducting e-commerce over a global communications network, comprising a computer server having access to the global communications network, and being programmed to:”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Ask Sponsored Listing’s (ASL’s) method of doing business, see ASK 1-199. • ASL sells online advertising space to advertisers. See Claim 1, preamble. • ASL describes its internet advertisement space over the internet. See Claim 1, element a. • To participate in the ASL system, the buyer inputs a maximum bid. ASL accepts the buyer’s maximum bid over the internet. See Claim 1, element b. • ASL accepts payment information over the internet. See Claim 2. • The buyer agrees to ASL’s terms and conditions over the internet. See Claim 1, element (c). • To participate in the ASL system, the buyer registers with ASL over the internet. See Claim 1, element (c). • The ASL system collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • ASL provides the buyer with help and FAQs about its system over the internet. See generally, ASK 1-199. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communication network. See Claim 1, preamble. • ASL is a system that sells online advertising space over the internet. Thus, it is a system for conducting e-commerce over a

	<p>global communications network.</p> <ul style="list-style-type: none"> ASL uses a computer server having access to the global communications that is programmed to implement its system. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> Thus, this element is satisfied.
<p>(a) “communicate to a buyer via the global communications network, data representing a plurality of products, said plurality of products including a first product;”</p>	<p>See Claim 18, element a.</p>
<p>(b) “accept acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined dependent on a performance of the buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement being communicated over the global</p>	<p>See Claim 18, element b.</p>

communications network;”	
(c) “determining the performance of the buyer based upon data received over the global communications network;”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 18(c) • The ASL collects data from the buyer including the keyword and ad text over the internet. See Claim 1, element (c). • ASL accepts the buyer’s maximum bid over the internet. See Claim 1, element (b). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the actual cost per click depends on the buyer’s ad text and keyword selection. See Claim 1, element (c). • ASL calculates a click-through rate over the internet. The buyer’s actual cost per click is related to the click through rate. See Claim 18, preamble. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves determining the performance of the buyer based upon the data received over the global communications network. • The data received is the keyword and ad text selection, which the ASL system receives from the buyer over the internet. The internet is a global communications network. See Claim 1, preamble. • Determining the performance of the buyer based on the keyword and ad text selection is determining the performance of the buyer based upon the data received over the global communications network. • ASL determines the buyer’s performance based on the keyword selection and ad text. The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is

	<p>because the actual cost per click depends on the buyer's ad text and keyword selection.</p> <ul style="list-style-type: none"> • Thus, ASL determines the performance of the buyer based on the keyword selection and ad text. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>“and (d) assign a price to the product, said price being scaled to the performance of the buyer.”</p>	<p>See Claim 18, element d.</p>

A9.com

Claim language	A9.com
Claim 1	
(Preamble) “A method of doing business over a global communications network comprising the steps:”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Clickriver’s method of doing business, see AM 1-93. • Clickriver sells online advertising space to advertisers. <ul style="list-style-type: none"> ○ “Advertise your business on Amazon.com” AM 2. ○ “What is a Clickriver advertisement? In Clickriver, an advertisement (ad) is a collection of creatives and keywords that you use to communicate your message to your potential customers.” AM 38. ○ “What do the ads look like when they’re displayed? The creative consists of a headline, one or two lines of description, and a Display URL. Some publishers display the description as a single line, while others display it on two lines. You’ll get to see a preview of your creative as you design it.” AM 39. ○ “About Clickriver Ads <ul style="list-style-type: none"> ▪ Clickriver Ads connects businesses with consumers who are looking for related products or services on the Amazon.com marketplace.” AM 8. ○ AM 9 indicates that Clickriver sells internet advertising space over the internet. ○ AM 12 states that the Help Desk FAQ is offered over the internet. ○ “Clickriver Ads lets advertisers place sponsored links on Amazon.com, the world’s ultimate online shopping destination. Sponsored links are text ads that display in response to a person’s search query or based on the

content of a web page.” AM 78

- Clickriver describes the product, internet advertisement space, over the internet. See Claim 1, element (a).
- To participate in the Clickriver system, the buyer inputs the maximum CPC. Clickriver accepts the buyer’s maximum CPC over the internet. See Claim 1, element b.
- Clickriver accepts payment information over the internet. See Claim 2.
- The buyer agrees to Clickriver’s Advertiser Agreement over the internet. See Claim 1, element (c).
- The buyer signs up with Clickriver over the internet. See Claim 1, element (c).
- The Clickriver system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c).
- Clickriver provides the buyer with tutorials and FAQs about its system over the internet. See generally, YAH 1-93.

Analysis:

- A “Global Communication Network” includes a network that connects computers around the world. The internet is a global communication network because it connects and allows communications between computers and computers networks around the world. See also Claim 14, which states that the internet is a global communications network.
- A “business” is the purchase and sale of goods in an attempt to make a profit. Selling internet advertising space to advertisers to make a profit is a business. Clickriver uses its system to sell internet advertising space over the internet. Clickriver conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its

	<p>Advertising Agreement over the internet, accepting payment over the internet, accepting the maximum CPC from the buyer over the internet, accepting keyword selections over the internet, and providing tutorials and FAQs over the internet.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “communicating to a buyer via the global communications network, a description of the product”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Clickriver describes its internet advertisement space over the internet. <ul style="list-style-type: none"> ○ “Advertise your business on Amazon.com” AM 2. ○ “What is a Clickriver advertisement? In Clickriver, an advertisement (ad) is a collection of creatives and keywords that you use to communicate your message to your potential customers.” AM 38. ○ “What do the ads look like when they’re displayed? The creative consists of a headline, one or two lines of description, and a Display URL. Some publishers display the description as a single line, while others display it on two lines. You’ll get to see a preview of your creative as you design it.” AM 39. ○ Image of the advertisement at AM 2, AM 10, AM 23. ○ “Clickriver allows you to put your business in front of quality customers in a familiar, trusted and highly-relevant environment on the Amazon.com marketplace.” AM12. ○ “Clickriver Ads is the only direct way to create, track and optimize sponsored link ad campaigns on Amazon.com.” AM12. ○ “Clickriver Ads appear next to search results and on product detail pages on the Amazon.com marketplace.” AM 6.

	<ul style="list-style-type: none"> ○ Clickriver provides additional examples of Clickriver ads on its web pages. ○ Pictorial of an ad is shown on AM 2, 11, 78. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> ● This element involves (1) communicating to a buyer a description of the product, a (2) via the global communications network <p><i>Communicating to a buyer a description of a product</i></p> <ul style="list-style-type: none"> ● An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product. ● The communications contained in Clickriver’s web pages, described above, contain text and picture representations of internet advertising space. These communications are intended for the advertiser, who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement spaces. Thus, Clickriver communicates to the buyer a description of the product. <p><i>Via the global communications system</i></p> <ul style="list-style-type: none"> ● The internet is a global communications network. See Claim 1, preamble. ● The Clickriver system shows its web pages over the internet. The web pages that are shown over the internet include those that contain text and pictorial descriptions the internet advertising space that Clickriver offers. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> ● Therefore, the Clickriver system involves communicating to the buyer a description of the product via the global communication network.
(b) “accepting a first	<u>Defendants’ Statements and Depictions:</u>

request from the buyer to buy the product for a price to be determined within a price range;”

- To participate in the Clickriver system, the buyer inputs a maximum cost per click (CPC). Clickriver accepts the buyer’s maximum CPC over the internet.
 - “What are the basic steps of ad creation and activation? Once you’ve created a Clickriver account, you are just steps away from activating your first ad. The flow from ad creation to activation is a simple one:
 - Create a campaign . . .
 - Set your ad name and bid . . .
 - Design a creative . . .
 - Select your keywords. Choose words or phrases that will trigger your ads. Customize the Max. CPC at the keyword level . . .
 - Review your information . . .
 - Set up your profile . . .
 - Set up billing . . .
 - Turn on your ad. You’re approved ad will become active almost immediately.” AM17
 - “You set the maximum you’re willing to pay for a click, and the most you want to pay per day” AM 4
 - “One easy way to decide on a Max. CPC is to look at your average rank to compare how your ad rates in comparison to competing ads. If you have a low average rank (between 3 and 10), that means your competition has an advantage, and your Max. CPC could use a boost.” AM 21
- The minimum CPC is ten cents.
 - “The minimum cost-per-click is 10 cents.” AM20
- The buyer’s actual cost falls between the maximum CPC and the minimum CPC.
 - “What determines the cost of each click and whether an

ad will appear?

- The higher you bid for a click, the more likely your ad will appear on the page.
 - “When you decide the maximum cost-per-click you are willing to pay, this information along with competitive bids (i.e. what others are willing to pay for the same keywords or category) and other performance factors determine whether the ad will be displayed and what the cost will be if the ad is clicked.” AM 5
 - “What is my average Cost-Per-Click (average CPC) and how is it determined? Your Average Cost-Per-Click (Ave [sic] CPC) depends in part on your Maximum Cost-Per-Click (Max. CPC) bid for a given keyword. It also depends on the average rank of the ad you have associated with this keyword. You will not be charged more than your Max-CPC bid and you may be charged less. Clickriver will charge you the minimum required to maintain your place ahead of your next competitor.” AM 40.

Analysis:

- This element involves (1) accepting a “request from the buyer to buy the product”, where (2) the price is “to be determined within a price range”. We consider these in reverse order.

The price of the product is “to be determined within a price range.”

- An internet advertising space is a product, as discussed in Claim 1, element a. Under the Clickriver system, the price falls within a price range between the maximum CPC and the minimum CPC. As described above, Clickriver accepts a maximum CPC, which is a price that is input by the buyer. The minimum CPC is 10 cents. The buyer’s actual cost falls between the maximum CPC and the minimum CPC. Thus, the price of the product is to

	<p>be determined within a price range.</p> <p><i>Clickriver’s system “accepts a request from the buyer to buy the product for a price”</i></p> <ul style="list-style-type: none"> • Accepting something that the buyer asks for is accepting a “request from the buyer” since a “request” is something asked for. The buyer’s maximum CPC is a request from the buyer to buy the product at a price to be determined within a price range, since Clickriver’s web pages state that the price of the internet advertisement space will fall between the minimum and maximum CPC. When the buyer inputs a maximum CPC, the buyer is aware that Clickriver will determine the price between the minimum CPC and the maximum CPC. • Clickriver accepts the request (if it is in the proper form), and, by doing so, allows that bid to participate in the continuing auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Clickriver system accepts a request from the buyer to buy the product for a price to be determined within a price range.
<p>(c) “accepting a second request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA);”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer agrees to Clickriver’s Advertiser Agreement over the internet. The Advertiser Agreement states that the buyer must pay fees calculated by Clickriver for the use of the Program. <ul style="list-style-type: none"> ○ “Fees are based solely on our measurements, and you agree to pay us the applicable fees we calculate for your use of the Program in US dollars only. Unless we have approved you for insertion order billing, you must provide us with a valid U.S. credit card in order to participate in the Program, and you authorize us to charge your credit card automatically for amounts due. Payments of invoiced amounts sent to insertion order participants, if any, will be due within thirty (30) days

from the date of the applicable invoice. We may require payment of interest at the rate of one and one half percent (1.5%) per month or the highest legally permissible rate, whichever is lower, on all amounts not paid when due until such amounts are paid in full.” Clickriver Advertiser Agreement at AM 92.

- To participate in the Clickriver system, the buyer signs up with Clickriver over the internet.
 - Online Sign-up is described at AM 4-12.
- To participate in the Clickriver system, the buyer creates an account and turns on the ad.
 - “What are the basic steps of ad creation and activation? Once you’ve created a Clickriver account, you are just steps away from activating your first ad. The flow from ad creation to activation is a simple one:
 - Create a campaign . . .
 - Set your ad name and bid . . .
 - Design a creative . . .
 - Select your keywords. Choose words or phrases that will trigger your ads. Customize the Max. CPC at the keyword level . . .
 - Review your information . . .
 - Set up your profile . . .
 - Set up billing . . .
 - Turn on your ad. You’re approved ad will become active almost immediately.” AM17.
 - “What is an account profile? Entering your account Profile information is part of the process of creating a new account. Your profile includes details about the account and contact information.” AM 32.
- To participate in the Clickriver system, the buyer chooses the

keyword and designs the creative (or ad text). The Clickriver system collects data from the buyer including the keyword and creative over the internet.

- “What are the basic steps of ad creation and activation? Once you’ve created a Clickriver account, you are just steps away from activating your first ad. The flow from ad creation to activation is a simple one:
 - Create a campaign . . .
 - Set your ad name and bid . . .
 - Design a creative . . .
 - Select your keywords. Choose words or phrases that will trigger your ads. Customize the Max. CPC at the keyword level . . .
 - Review your information . . .
 - Set up your profile . . .
 - Set up billing . . .
 - Turn on your ad. You’re approved ad will become active almost immediately.” AM17.
- Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against competing ads.
 - “What does Average Rank mean? This number indicates how our ad is rated in comparison to competing ads. The best rank is a one. A dash indicates that your rank is below the scale or that no one has queried any of your keywords.” AM23, AM40.
 - “How is the average rank of my ad determined? The average rank of your ad is determined through consideration of a number of factors, such as Maximum Cost-Per-Click (Max.CPC) bid and Click-Through Rate (CTR) among others.” AM40.

	<ul style="list-style-type: none">○ “One easy way to decide on a Max. CPC is to look at your average rank to compare how your ad rates in comparison to competing ads. If you have a low average rank (between 3 and 10), that means your competition has an advantage, and your Max. CPC could use a boost.” AM 21.○ “Your ad may have been outbid by competing ads because your Max. CPC is too low. Check the average rank of the keyword to see how well the keyword is performing against the competition.” AM 30.● The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank.<ul style="list-style-type: none">○ “How can I improve the rank of my ad? Increasing your Maximum Cost-Per-Click (Max. CPC) buy may help boost your average rank. However, since average rank hinges on factors such as Click-Through-Rate (CTR), as well as on Max. CPC bid, improving response to your ad may also help improve your average rank.” AM 40.○ “A low Click-through-Rate (CTR) implies that, although your ad is receiving impressions in response to search queries, potential customers are not clicking on it. In considering ways to increase clicks, you may wish to review all aspects of your ad: are your keywords truly relevant to the content of your ad and the associated URL? If the keywords not, a viewer is less likely to be interested in clicking on the ad. You may find it useful to vary the bids on different keywords; this may help your ad perform better.<ul style="list-style-type: none">▪ Is your headline compelling? Does the
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	<p>description set your product or service apart from competitors (without exaggerating or misleading the viewer)? Have you thought of incorporating keywords into your headline or description?</p> <ul style="list-style-type: none">▪ Keep in mind that keywords with a low performance score will become inactive and will stop generating impressions. A low performance rating can result from a very low CTR. To keep a keyword from becoming inactive, target your ad well and design your creatives to be relevant and compelling to users.” AM 40.○ “What is my average Cost-Per-Click (average CPC) and how is it determined? Your Average Cost-Per-Click (Ave [sic] CPC) depends in part on your Maximum Cost-Per-Click (Max. CPC) bid for a given keyword. It also depends on the average rank of the ad you have associated with this keyword. You will not be charged more than your Max-CPC bid and you may be charged less. Clickriver will charge you the minimum required to maintain your place ahead of your next competitor.” AM 40.• The buyer’s actual cost per click depends on the buyer’s ad rank.<ul style="list-style-type: none">○ “What is my average Cost-Per-Click (average CPC) and how is it determined? Your Average Cost-Per-Click (Ave [sic] CPC) depends in part on your Maximum Cost-Per-Click (Max. CPC) bid for a given keyword. It also depends on the average rank of the ad you have associated with this keyword. You will not be charged more than your Max-CPC bid and you may be charged less. Clickriver will charge you the minimum required to maintain your place ahead of your next competitor.” AM
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40.

- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because the ad rank rates the buyer's ad against competing ads. The ad rank, in turn, affects price. Ads with better ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click.
 - "What is my average Cost-Per-Click (average CPC) and how is it determined? Your Average Cost-Per-Click (Ave [sic] CPC) depends in part on your Maximum Cost-Per-Click (Max. CPC) bid for a given keyword. It also depends on the average rank of the ad you have associated with this keyword. You will not be charged more than your Max-CPC bid and you may be charged less. Clickriver will charge you the minimum required to maintain your place ahead of your next competitor." AM40.
 - "What does Average Rank mean? This number indicates how our ad is rated in comparison to competing ads. The best rank is a one. A dash indicates that your rank is below the scale or that no one has queried any of your keywords." AM23, AM40.
 - "What determines the cost of each click and whether an ad will appear?"
 - The higher you bid for a click, the more likely your ad will appear on the page.
 - When you decide the maximum cost-per-click you are willing to pay, this information along with competitive bids (i.e. what others are willing to pay for the same keywords or category) and other performance factors determine whether the

ad will be displayed and what the cost will be if the ad is clicked.” AM 5.

- Clickriver accepts the buyer’s agreement to Clickriver’s Advertiser Agreement, as well as the sign up and creation of the account. After the buyer agrees to Clickriver’s Advertiser Agreement, signs up, and creates the account (among other things), Clickriver begins running the ads on the network.
 - “What are the basic steps of ad creation and activation? Once you’ve created a Clickriver account, you are just steps away from activating your first ad. The flow from ad creation to activation is a simple one:
 - Create a campaign . . .
 - Set your ad name and bid . . .
 - Design a creative . . .
 - Select your keywords. Choose words or phrases that will trigger your ads. Customize the Max. CPC at the keyword level . .
 - Review your information . . .
 - Set up your profile . . .
 - Set up billing . . .
 - Turn on your ad. You’re approved ad will become active almost immediately.” AM17

Analysis:

- This element involves (1) accepting a “request from the buyer” to allow (2) “the price to be determined based upon a performance of the buyer while participating in a price determining activity.” We consider these in reverse order.

“price to be determined based upon a performance of the buyer while participating in a price determining activity”

- The competitive submission of keywords and ad text is an “activity.”

- The buyer’s price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text. Clickriver’s web pages state that the buyer’s actual cost per click depends on the buyer’s rank. The buyer’s rank is directly related to the buyer’s comparative performance. This is because the rank is a measure of the performance of the buyer’s ad compared to ads that it competes with, and the rank impacts the cost per click. Therefore, the price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text.

“accepting a second request from the buyer”

- The buyer’s agreement to Clickriver’s Advertiser Agreement is a request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. This is because the Advertiser Agreement states that the buyer must pay fees calculated by Clickriver for the use of the Program. Clickriver’s web pages state that the buyer’s actual cost per click is related to the buyer’s rank, which depends on the buyer’s comparative performance at keyword and ad text selection. By agreeing to Clickriver’s Advertiser Agreement, the buyer requests that Clickriver allow the price to be determined based on the performance of the buyer while performing keyword selection and ad creation, as outlines in Clickriver’s web pages.
- In the alternative, the buyer’s act of signing up, and/or account creation is the request to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity. Clickriver’s web pages state that the buyer’s actual cost per click is related to the buyer’s rank, which depends on the buyer’s comparative performance at keyword

	<p>and ad text selection. Thus, the act of signing up, and/or creating the account is a request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a price determining activity.</p> <ul style="list-style-type: none"> • Clickriver accepts the buyer’s agreement to Clickriver’s Advertiser Agreement, as well as the sign up and creation of the account. After the buyer agrees to Clickriver’s Advertiser Agreement, signs up, and creates the account (among other things), Clickriver begins running the ads on the its network. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Therefore, the Clickriver system accepts a second request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA).
<p>(d) “receiving data from the buyer over the global communications network, said data representing the performance of the buyer during the PDA;”</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Clickriver system collects data from the buyer including the keyword and creative (or ad text) over the internet. See Claim 1, element (c). • Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against competing ads. See Claim 1, element (c). • The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s ad rank. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the ad rank rates the

	<p>buyer’s ad against competing ads. The ad rank, in turn, affects price. Ads with high ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. See Claim 1, element (c).</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • As discussed above, the performance of the buyer during the PDA is the buyer’s selection of advertising text and associated keywords. Data representing the buyer’s performance consists of the text and associated keywords that result from that selection. This data is received by Clickriver from the buyer over the internet, which is a global communications network. See analysis for Claim 1, preamble. • <u>Conclusion:</u> • Thus, this element is satisfied.
<p>(e) “and determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Clickriver system collects data from the buyer including the keyword and creative (or ad text) over the internet. See Claim 1, element (c). • Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against competing ads. See Claim 1, element (c). • The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s ad rank. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the ad rank rates the

buyer's ad against competing ads. The ad rank, in turn, affects price. Ads with high ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. See Claim 1, element (c).

- To participate in the Clickriver system, the buyer inputs a maximum cost per click (CPC). Clickriver accepts the buyer's maximum CPC over the internet. See Claim 1, element b.
- The minimum CPC is ten cents. See Claim 1, element b.
- The buyer's actual cost falls between the maximum CPC and the minimum CPC. See Claim 1, element b.

Analysis:

- This element involves (1) determining the price of the product based at least partially upon the data received, (2) said price being within the range and scaled to the performance of the buyer.

Determining the price of the product based at least partially upon the data received

- The data received is the keyword selection and ad text, which the Clickriver system receives from the buyer over the internet.
- Determining the price of the product at least partially on the keyword selection and ad text is determining the product based at least partially upon the data received.
- Clickriver determines the price of the product at least partially on the keyword selection and ad text.
- The ad rank depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher ad rank, resulting in a lower price.
- The buyer's actual cost per click is directly related to the buyer's comparative performance, since it depends on the ad rank.
- Thus, Clickriver determines the price of the product at least

	<p>partially on the data received, the keyword selection and the ad text.</p> <p><i>Said price being within the price range and scaled to the performance of the buyer</i></p> <ul style="list-style-type: none"> • Under the Clickriver system, the price falls within a price range between the maximum CPC and the minimum CPC. As described above, Clickriver accepts a maximum CPC, which is a price that is input by the buyer. The minimum CPC is ten cents. The buyer’s actual cost falls between the maximum CPC and the minimum CPC. Thus, the price is to be determined within a price range. • A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer. Under the Clickriver system, the price is relative or proportionate to the performance of the buyer in the competitive submission of ad text and keyword selection. This is because the buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the ad rank rates the buyer’s ad against competing ads. The ad rank, in turn, affects price. Ads with high ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Clickriver system involves determining the price of the product based at least partially upon the data received, said price being within the range and scaled to the performance of the buyer.
Claim 2	
(pre) the method of claim 1, further comprising the step	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p>

of	<ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) accepting payment information from the buyer over the global communications network	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • Clickriver collects billing information from the buyer. <ul style="list-style-type: none"> ○ “What are the basic steps of ad creation and activation? Once you’ve created a Clickriver account, you are just steps away from activating your first ad. The flow from ad creation to activation is a simple one: <ul style="list-style-type: none"> ▪ Create a campaign . . . ▪ Set your ad name and bid . . . ▪ Design a creative . . . ▪ Select your keywords. Choose words or phrases that will trigger your ads. Customize the Max. CPC at the keyword level . . . ▪ Review your information . . . ▪ Set up your profile . . . ▪ Set up billing. From the Billing tab, use Amazon Payments to enter your electronic payment information. ▪ Turn on your ad. You’re approved ad will become active almost immediately.”AM17 ○ “If you have not yet completed the account profile and billing information, or if your account has been suspended due to payment failure, none of your ads will display even if they are listed as “Active”.” AM 28 ○ “What are my payment options? Most Clickriver advertisers pay via credit card. We call this the electronic billing method.” AM 21 <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves accepting payment information from the

	<p>buyer over the global communications network.</p> <ul style="list-style-type: none"> • Billing information is payment information. The Clickriver system accepts payment information including billing address and credit card information over the internet. The internet is a global communications network. See Claim 1, preamble. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 9	
(pre) The method of claim 1,	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) wherein the PDA requires participation of at least one participant in addition to the buyer.	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Clickriver system involves more than one buyer. <ul style="list-style-type: none"> ○ “What does Average Rank mean? This number indicates how our ad is rated in comparison to competing ads. The best rank is a one. A dash indicates that your rank is below the scale or that no one has queried any of your keywords.” AM23, AM40. ○ “One easy way to decide on a Max. CPC is to look at your average rank to compare how your ad rates in comparison to competing ads. If you have a low average rank (between 3 and 10), that means your competition has an advantage, and your Max. CPC could use a boost.” AM 21. • In order to determine the price, Clickriver compares the rank of more than one buyer. <ul style="list-style-type: none"> ○ “What is my average Cost-Per-Click (average CPC) and

	<p>how is it determined? Your Average Cost-Per-Click (Ave [sic] CPC) depends in part on your Maximum Cost-Per-Click (Max. CPC) bid for a given keyword. It also depends on the average rank of the ad you have associated with this keyword. You will not be charged more than your Max-CPC bid and you may be charged less. Clickriver will charge you the minimum required to maintain your place ahead of your next competitor.” AM 40.</p> <ul style="list-style-type: none"> • The buyer’s actual cost per click depends on the buyer’s ad rank. See Claim 1, element c. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a further step of wherein the PDA requires the participation of at least one participant in addition to the buyer. • The Clickriver system involves more than one buyer. The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The PDA requires the participation of at least one participant in addition to the buyer, because the buyer’s comparative performance on keyword and ad text submission determines price. Clickriver’s web pages show that the cost per click is determined by comparing the rank of more than one participant. In order for Clickriver to compare the performance, at least one participant in addition to the buyer is required. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the PDA in this instance, the competitive submission of keywords and ad text, requires the participation of more than one buyer.
Claim 10	
(pre) “The method as	<u>Defendant’s Statements & Depictions:</u>

<p>in claim 9, further comprising”</p>	<ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 9. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 9. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “the step of determining the price based at least partially upon a competition between the buyer and at least one participant using the PDA.”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Clickriver system involves more than one buyer. See Claim 9, element a. • To participate in the Clickriver system, the buyer chooses the keyword and designs the creative (or ad text). The Clickriver system collects data from the buyer including the keyword and creative over the internet. See Claim 1, element c. • Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against competing ads. See Claim 1, element c. • The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank. See Claim 1, element c. • The buyer’s actual cost per click depends on the buyer’s ad rank. See Claim 1, element c. • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the ad rank rates the buyer’s ad against competing ads. The ad rank, in turn, affects price. Ads with better ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. See Claim 1, element c. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element requires the step of determining the price based at

	<p>least partially upon a competition between the buyer and at least one participant using the PDA.</p> <ul style="list-style-type: none"> • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. This is because the buyer’s comparative performance on keyword and ad text submission determines price. Clickriver’s web pages show that the cost per click is determined by comparing the rank of more than one participant. The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the rank is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the rank impacts the cost per click. • Therefore, the price is determined based at least partially upon a competition between the buyer and at least one participant using the PDA. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 11	
<p>(pre) “The method as in claim 10, wherein the at least one participant is a second buyer, and further comprising the steps of”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 10. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 10. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “accepting a second request from the second buyer to buy the product for a</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • There is more than one buyer in the Clickriver system. See Claim 9, element a.

second price to be determined within the price range, and”

- To participate in the Clickriver system, each buyer inputs the maximum CPC. See Claim 1, element b.
 - “What are the basic steps of ad creation and activation? Once you’ve created a Clickriver account, you are just steps away from activating your first ad. The flow from ad creation to activation is a simple one:
 - Create a campaign . . .
 - Set your ad name and bid . . .
 - Design a creative . . .
 - Select your keywords. Choose words or phrases that will trigger your ads. Customize the Max. CPC at the keyword level . . .
 - Review your information . . .
 - Set up your profile . . .
 - Set up billing . . .
 - Turn on your ad. You’re approved ad will become active almost immediately.” AM17
 - “You set the maximum you’re willing to pay for a click, and the most you want to pay per day” AM 4.
 - “One easy way to decide on a Max. CPC is to look at your average rank to compare how your ad rates in comparison to competing ads. If you have a low average rank (between 3 and 10), that means your competition has an advantage, and your Max. CPC could use a boost.” AM 21
- The minimum CPC is ten cents. See Claim 1, element b.
- Each buyer’s actual cost falls between the maximum CPC and the minimum CPC. See Claim 1, element b.
 - “What determines the cost of each click and whether an ad will appear?”
- The higher you bid for a click, the more likely your ad will

appear on the page.

- “When you decide the maximum cost-per-click you are willing to pay, this information along with competitive bids (i.e. what others are willing to pay for the same keywords or category) and other performance factors determine whether the ad will be displayed and what the cost will be if the ad is clicked.” AM 5
- “What is my average Cost-Per-Click (average CPC) and how is it determined? Your Average Cost-Per-Click (Ave [sic] CPC) depends in part on your Maximum Cost-Per-Click (Max. CPC) bid for a given keyword. It also depends on the average rank of the ad you have associated with this keyword. You will not be charged more than your Max-CPC bid and you may be charged less. Clickriver will charge you the minimum required to maintain your place ahead of your next competitor.” AM 40.

Analysis:

- This element requires accepting a second request from a second buyer for a second price to be determined within the price range.

Second buyer

- There is more than one buyer in the Clickriver system. This is indicated by Clickriver’s web pages, which states that ads compete against other ads. Since there is more than one buyer, there is a second buyer.

accepting a second request from the second buyer to buy the product for a second price to be determined within the price range

- To participate in the Clickriver system, each buyer inputs a maximum CPC. Thus, the second buyer inputs a second maximum CPC. Under the Clickriver system, each buyer’s price falls within a price range between that buyer’s maximum CPC

	<p>and minimum CPC. The second buyer’s actual cost falls between the second buyer’s maximum CPC and the minimum CPC. Thus, the second buyer’s price is to be determined within a price range between the second buyer’s maximum CPC and minimum CPC.</p> <ul style="list-style-type: none"> • Accepting something that the second buyer asks for is accepting a second request from the second buyer since a “request” is something asked for. The second buyer’s maximum CPC is a request from the second buyer to buy the product at a price to be determined within a price range, since Clickriver’s web pages state that the price will fall between the second buyer’s minimum and maximum CPC. When the second buyer inputs a maximum CPC, the second buyer is aware that Clickriver will determine the price between the minimum CPC and the maximum CPC. Clickriver accepts the second buyer’s request (if it is in the proper form), and, by doing so, allows that bid to participate in the continuing auction. Thus, the Clickriver system accepts a second request from the second buyer to buy the product for a second price to be determined within the price range. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(b) “determining said second price based at least partially upon the competition.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The Clickriver system involves more than one buyer. See Claim 9, element a. • To participate in the Clickriver system, each buyer chooses the keyword and designs the creative (or ad text). The Clickriver system collects data from the buyer including the keyword and creative over the internet. <ul style="list-style-type: none"> ○ “What are the basic steps of ad creation and activation? Once you’ve created a Clickriver account, you are just

steps away from activating your first ad. The flow from ad creation to activation is a simple one:

- Create a campaign . . .
- Set your ad name and bid . . .
- Design a creative . . .
- Select your keywords. Choose words or phrases that will trigger your ads. Customize the Max. CPC at the keyword level . . .
- Review your information . . .
- Set up your profile . . .
- Set up billing . . .
- Turn on your ad. You're approved ad will become active almost immediately.” AM17

- Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against competing ads. See Claim 1, element c.
- The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank. See Claim 1, element c.
- The buyer's actual cost per click depends on the buyer's ad rank. See Claim 1, element c.
- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because the ad rank rates the buyer's ad against competing ads. The ad rank, in turn, affects price. Ads with better ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. See Claim 1, element c.

Analysis:

- This element requires the step of determining the second price

	<p>based at least partially upon the competition.</p> <ul style="list-style-type: none"> • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. • The PDA in this instance is the competitive submission of keywords and ad text, as discussed in Claim 1, element c. The price is based on the competition between the buyer and at least one other person during the competitive submission of keywords and ad text. This is because the buyer’s comparative performance on keyword and ad text submission determines price. Clickriver’s web pages show that the cost per click is determined by comparing the rank of more than one participant. The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the rank is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the rank impacts the cost per click. Since each buyer’s price is based on the competition, the second buyer’s price is based at least partially upon the competition as well. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 12	
(pre) “The method of claim 1,”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the steps of accepting the first request from the	<p><u>Defendant’s Depictions and Statements:</u></p> <ul style="list-style-type: none"> • To participate in the Clickriver system, the buyer inputs the maximum CPC. See Claim 1, element (b).

<p>buyer, accepting the second request from the buyer, and receiving the performance data from the buyer, are performed by a master controller.”</p>	<ul style="list-style-type: none"> • The buyer agrees to Clickriver’s Advertiser Agreement over the internet. The Advertiser Agreement states that the buyer must pay fees calculated by Clickriver for the use of the Program. See Claim 1, element (c). • To participate in the Clickriver system, the buyer signs up with Clickriver over the internet. See Claim 1, element (c). • To participate in the Clickriver system, the buyer creates an account and turns on the ad. See Claim 1, element (c). • To participate in the Clickriver system, the buyer chooses the keyword and designs the creative (or ad text). The Clickriver system collects data from the buyer including the keyword and creative over the internet. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The Clickriver system accepts a first request from the buyer, a second request from the buyer, and receives performance data from the buyer. See Analysis Claim 1(a). • Clickriver’s system uses computer software with routines that carries out control over routines that accept a first request from the buyer, a second request from the buyer, and performance data from the buyer. This constitutes the master controller. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>Claim 13</p>	
<p>(pre) “The method of claim 1,”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) wherein the price</p>	<p><u>Defendant’s Statements & Depictions:</u></p>

<p>is determined at least partially upon participation of the buyer in an auction.</p>	<ul style="list-style-type: none"> • The Clickriver system involves bidding for internet advertisement space. <ul style="list-style-type: none"> ○ “What are the basic steps of ad creation and activation? Once you’ve created a Clickriver account, you are just steps away from activating your first ad. The flow from ad creation to activation is a simple one: <ul style="list-style-type: none"> ▪ Create a campaign . . . ▪ Set your ad name and bid . . .” AM17 ○ “When you decide the maximum cost-per-click you are willing to pay, this information, along with competitive bids (i.e. what others are willing to pay for the same keywords or category) and other performance factors determine whether the ad will be displayed and what the cost will be if the ad is clicked.” AM5 • The buyer’s maximum CPC is the highest that the buyer can be charged per click. <ul style="list-style-type: none"> ○ “You will not be charged more than your Max-CPC bid and you may be charged less. Clickriver will charge you the minimum required to maintain your place ahead of your next competitor.” AM 40. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • An auction is the sale of property based on bids. The Clickriver system involves the sale of internet advertising space based on bids. The buyer’s maximum CPC is the buyer’s auction bid. It affects price because it is the highest that the bidder can be charged. Thus, the price is determined at least partially upon participation of the buyer in an auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 14	
(pre) “The method of	<u>Defendant’s Statements & Depictions:</u>

claim 1”	<ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the global communications network is the Internet.”	<p><u>Defendant’s Descriptions and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Clickriver’s method of doing business, see AM 1-93. • Clickriver sells online advertising space to advertisers. See Claim 1, preamble. • Clickriver describes the product, internet advertisement space, over the internet. See Claim 1, element (a). • To participate in the Clickriver system, the buyer inputs the maximum CPC. Clickriver accepts the buyer’s maximum CPC over the internet. See Claim 1, element b. • Clickriver accepts payment information over the internet. See Claim 2. • The buyer agrees to Clickriver’s Advertiser Agreement over the internet. See Claim 1, element (c). • The buyer signs up with Clickriver over the internet. Se Claim 1, element (c). • The Clickriver system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c). • Clickriver provides the buyer with tutorials and FAQs about it system over the internet. See AM 1-93. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communication network. See Claim 1, preamble. • A “business” is the purchase and sale of goods in an attempt to

	<p>make a profit. Selling internet advertising space to advertisers to make a profit is a business. Clickriver sells internet advertising space over the internet. Thus, the Clickriver system is a method of doing business over a global communications system.</p> <p>Clickriver conducts its business over the internet by, among other things, describing its product over the internet, directing the buyer to accept its Advertiser Agreement over the internet, accepting payment over the internet, accepting maximum CPCs from the buyer over the internet, accepting keyword selections over the internet, and providing tutorials and FAQs over the internet. See Claim 1, preamble.</p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Google AdWords system is a method of doing business over a global communications network.
Claim 15	
(pre) “The method of claim 1”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 1. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
“wherein the price is determined at least partially upon an offer received from the buyer.”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • To participate in the Clickriver system, the buyer inputs a maximum CPC. See Claim 1, element b. • The buyer’s maximum cost per click is a bid. Clickriver uses the maximum CPC as the highest price that the buyer will pay. <ul style="list-style-type: none"> ○ “You will not be charged more than your Max-CPC bid and you may be charged less. Clickriver will charge you the minimum required to maintain your place ahead of your next competitor.” AM 40.

	<p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a method of Claim 1 wherein the price is determined at least partially upon an offer received from the buyer. • Receiving a bid from the buyer is receiving an offer from the buyer, since a bid is an offer. Clickriver receives the buyer's maximum CPC, or bid, from the buyer. The maximum CPC (or bid) is an offer. Thus, Clickriver receives an offer from the buyer. The offer from the buyer affects price, since Clickriver uses the maximum bid as the highest price the buyer will pay. Thus, the price is determined at least partially upon an offer received from the buyer. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 18	
<p>(pre) “A method of determining a price of a product using a global communications network, comprising the steps:”</p>	<p><u>Defendant's Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Clickriver accepts the buyer's maximum CPC over the internet. See Claim 1, element b. • The Clickriver system collects data from the buyer including the keyword and creative over the internet. See Claim 1, element (c). • The buyer's actual cost falls between the maximum CPC and the minimum CPC. See Claim 1, element b. • Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against competing ads. See Claim 1, element (c). • The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank.

	<p>See Claim 1, element (c).</p> <ul style="list-style-type: none"> • The buyer’s actual cost per click depends on the buyer’s ad rank. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communications network. See Claim 1, preamble. • An internet advertisement space is a product, see Claim 1, element a. Clickriver uses the global communications network to collect information from buyers, including the maximum CPC, keyword selection, and ad text selection. • Clickriver uses that information, which is collected using the internet, to determine the price of the product. It uses the maximum CPC as the cap for price. The keyword and ad text also affect the ad rank, which in turn affect price. Thus, the Clickriver system is a method determining a price of a product, internet advertising space, using a global communications network. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “communicating to a buyer via the global communications network, data representing a plurality of products available, said plurality of products including a first product;”</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Clickriver describes its internet advertisement space, over the internet. See Claim 1, element a. • Clickriver provides additional examples of its ads on its web pages. See Claim 1, element a. • Images describing more than one internet advertisement space are shown on the Clickriver’s web pages. AM85-86. • More than one position is available position is available for the internet advertisement. AM85-86. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communications network. See Claim 1,

	<p>preamble.</p> <ul style="list-style-type: none"> • An internet advertisement space is a product, and a representation by a picture or text, of such ad space, is a description of a product. See Claim 1, element a. • The communications contained in Clickriver’s web pages, described above, contain text and picture representations of internet advertising space. See Claim 1, element a. More than one type of advertisement is described, and more than one position for the advertisement is described. The Clickriver web pages show that different advertisements may be purchased for different keywords, and that the advertisements may be in different positions. Thus, they show a plurality of products, including a first product. • These communications are intended for the advertiser, who is the buyer of internet advertising space. The web pages are directed at, and viewed by, the buyer of internet advertisement space. Thus, Clickriver communicates to the buyer data representing a plurality of products available. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, the Clickriver system communicates to a buyer via the global communications network, data representing a plurality of products available, said plurality of products including a first product.
<p>(b) “accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined upon a</p>	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • The buyer agrees to Clickriver’s Advertiser Agreement over the internet. The Advertiser Agreement states that the buyer must pay fees calculated by Clickriver for the use of the Program. See Claim 1, element (c). • To participate in the Clickriver system, the buyer signs up with Clickriver over the internet. See Claim 1, element (c).

<p>performance of the buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement being communicated over the global communications network;”</p>	<ul style="list-style-type: none"> • To participate in the Clickriver system, the buyer creates an account and turns on the ad. See Claim 1, element (c). • To participate in the Clickriver system, the buyer chooses the keyword and designs the creative (or ad text). See Claim 1, element (c). • Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against competing ads. See Claim 1, element (c). • The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s ad rank. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the ad rank rates the buyer’s ad against competing ads. The ad rank, in turn, affects price. Ads with better ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. See Claim 1, element (c). • Clickriver accepts the buyer’s agreement to Clickriver’s Advertiser Agreement, as well as the sign up and creation of the account. After the buyer agrees to Clickriver’s Advertiser Agreement, signs up, and creates the account (among other things), Clickriver begins running the ads on the network. Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves (1) “accepting acknowledgement from the buyer representing an intent of the buyer to buy the first
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product,” (2) “at a price to be determined upon a performance of the buyer while participating in a Price-Determining-Activity (PDA),” (3) “said acknowledgement being communicated over the global communications network.”

“price to be determined based upon a performance of the buyer while participating in a price determining activity”

- The competitive submission of keywords and ad text is an “activity.”
- The buyer’s price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text. Clickriver’s web pages state that the buyer’s actual cost per click depends on the buyer’s rank. The buyer’s rank is directly related to the buyer’s comparative performance. This is because the rank is a measure of the performance of the buyer’s ad compared to ads that it competes with, and the rank impacts the cost per click. Therefore, the price is determined based on the performance of the buyer while participating in the competitive submission of keywords and ad text.

“accepting acknowledgment from the buyer representing an intent of the buyer to buy the first product”

- The buyer’s agreement to Clickriver’s Advertiser Agreement is acknowledgment from the buyer representing an intent of the buyer to buy the product. This is because the Advertiser Agreement states that the buyer must pay fees calculated by Clickriver for the use of the Program. By agreeing to Clickriver’s Advertiser Agreement, the buyer acknowledges that Clickriver will allow the price to be determined based on the performance of the buyer while performing keyword selection and ad creation, as outlined in Clickriver’s web pages.
- In the alternative, the buyer’s act of signing up, creating an

	<p>account, and/or turning on the advertisement is the acknowledgment of the intent to buy the product for a price to be determined based upon a performance of the buyer while participating in a price determining activity. Clickriver’s web pages state that the buyer’s actual cost per click is related to the ad rank, which depends on the relevance of the submitted keywords and ad text. In addition, the web pages indicate that the buyer’s comparative performance on keyword and ad text submission determines price. Thus, the act of signing up, creating an account, and/or turning on the advertisement is that acknowledgment of intent.</p> <ul style="list-style-type: none"> • Clickriver accepts the buyer’s agreement to Clickriver’s Advertiser Agreement, as well as the sign up and creation of the account. After the buyer agrees to Clickriver’s Advertiser Agreement, signs up, and creates the account (among other things), Clickriver begins running the ads on the network. Claim 1, element (c). <p><i>said acknowledgement being communicated over the global communications network</i></p> <ul style="list-style-type: none"> • The buyer agrees to Clickriver’s Advertiser Agreement, activates the account, creates an account, and turns on the ad over the internet. • The internet is a global communications network. See Claim 1, preamble. Thus, the acknowledgment is communicated over the internet. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(c) “determining the performance of the buyer;”	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against competing ads. See Claim 1, element (c).

	<ul style="list-style-type: none"> • The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank. See Claim 1, element (c). • The buyer’s actual cost per click depends on the buyer’s ad rank. See Claim 1, element (c). • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the ad rank rates the buyer’s ad against competing ads. The ad rank, in turn, affects price. Ads with better ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This element involves determining the performance of the buyer. The Clickriver system determines the performance of the buyer by collecting the keyword and ad text selection. • The competitive submission of keywords and ad text is an “activity.” The buyer’s performance is how well the buyer does at this task. Clickriver’s web pages state that Clickriver calculates an ad rank from this information, which determines price. The ad rank depends on the relevance of the submitted keywords and ad text, so it depends on the performance of the buyer. In this way, Clickriver determines the performance of the buyer. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(d) and assigning a price to the product, said price being	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against

<p>scaled to the performance of the buyer</p>	<p>competing ads. See Claim 1, element (c).</p> <ul style="list-style-type: none"> • The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank. See Claim 1, element (c). • The buyer's actual cost per click depends on the buyer's ad rank. See Claim 1, element (c). • The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because the ad rank rates the buyer's ad against competing ads. The ad rank, in turn, affects price. Ads with better ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. See Claim 1, element (c). <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • Clickriver assigns a price, since it states that it calculates an actual cost per click. • A price that is relative or proportionate to the performance of the buyer is a price that is scaled to the performance of the buyer. Under the Clickriver system, the price is relative to the performance of the buyer in the competitive submission of ad text and keyword selection. • This is because the ad rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank. Ads with better ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. Thus, Clickriver assigns a price to the product that is scaled to the performance of the buyer. <p><u>Conclusion:</u></p>
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	<ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 20	
(pre) The method of claim 18, further comprising the step of	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <u>Analysis:</u> <ul style="list-style-type: none"> • See Analysis for Claim 18. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “accepting payment information from the buyer over the global communications network.”	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • Clickriver collects billing information from the buyer. See Claim 2, element a. <u>Analysis:</u> <ul style="list-style-type: none"> • This element involves accepting payment information from the buyer over the global communications network. • Billing information is payment information. The Clickriver system accepts payment information including billing address and credit card information over the internet. The internet is a global communications network. See Claim 1, preamble. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 21	
(pre) The method of claim 18, further comprising the step of	<u>Defendant’s Statements & Depictions:</u> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <u>Analysis:</u> <ul style="list-style-type: none"> • See Analysis for Claim 18. <u>Conclusion:</u> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price is dependent at least partially upon a bid	<u>Defendant’s Statements and Depictions:</u> <ul style="list-style-type: none"> • To participate in the Clickriver system, the buyer inputs a maximum CPC. See Claim 1, element b.

<p>selected by the buyer.”</p>	<ul style="list-style-type: none"> • The buyer’s maximum cost per click is a bid. Clickriver uses the maximum CPC as the highest price that the buyer will pay. See Claim 15, element a. <ul style="list-style-type: none"> ○ “You will not be charged more than your Max-CPC bid and you may be charged less. Clickriver will charge you the minimum required to maintain your place ahead of your next competitor.” AM 40. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • This claim involves a method of Claim 1 wherein the price is determined at least partially upon an offer received from the buyer. • The maximum CPC is a bid selected by the buyer. The bid is selected by the buyer, since the <i>buyer</i> chooses and inputs the maximum bid. Clickriver uses the buyer’s maximum CPC, or bid, from the buyer as the highest price the buyer will pay. Thus, the price is determined at least partially upon an offer received from the buyer. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 22	
<p>(pre) “The method of claim 18, further comprising the step of”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “wherein the price is determined at least partially upon results of an auction.”</p>	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • The Clickriver system involves bidding for internet advertisement space. See Claim 13, element a. • The buyer’s maximum CPC is the highest that the buyer can be

	<p>charged per click. See Claim 13, element a.</p> <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • An auction is the sale of property based on bids. The Clickriver system involves the sale of internet advertising space based on bids. The buyer’s maximum CPC is the buyer’s auction bid. It affects price because it is the highest that the bidder can be charged. Thus, the price is determined at least partially upon participation of the buyer in an auction. Thus, the price is determined at least partially upon the results of an auction. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
Claim 23	
(pre) “The method of claim 18, further comprising the step of”	<p><u>Defendant’s Statements & Depictions:</u></p> <ul style="list-style-type: none"> • See Defendant’s Statements and Depictions in Claim 18. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Analysis for Claim 18. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
(a) “wherein the price is determined at least partially upon an offer received from the buyer.”	<p><u>Defendants’ Statements and Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 15, element a. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • See Claim 15, element a.
Claim 30	
(pre) “A system for conducting e-commerce over a global communications network, comprising	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • For a general description of Clickriver’s method of doing business, see AM 1-93. • Clickriver sells online advertising space to advertisers. See Claim 1, preamble. • Clickriver describes the product, internet advertisement space,

<p>a computer server having access to the global communications network, and being programmed to:”</p>	<p>over the internet. See Claim 1, element (a).</p> <ul style="list-style-type: none"> • To participate in the Clickriver system, the buyer inputs the maximum CPC. Clickriver accepts the buyer’s maximum CPC over the internet. See Claim 1, element b. • Clickriver accepts payment information over the internet. See Claim 2. • The buyer agrees to Clickriver’s Advertiser Agreement over the internet. See Claim 1, element (c). • The buyer signs up with Clickriver over the internet. Se Claim 1, element (c). • The Clickriver system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c). • Clickriver provides the buyer with tutorials and FAQs about it system over the internet. See generally, YAH 1-93. <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The internet is a global communication network. See Claim 1, preamble. • Clickriver is a system that sells online advertising space over the internet. Thus, it is a system for conducting e-commerce over a global communications network. • Clickriver uses a computer server having access to the global communications that is programmed to implement its system. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>(a) “communicate to a buyer via the global communications network, data representing a</p>	<ul style="list-style-type: none"> • See Claim 18, element a.

<p>plurality of products, said plurality of products including a first product;”</p>	
<p>(b) “accept acknowledgement from the buyer representing an intent of the buyer to buy the first product at a price to be determined dependent on a performance of the buyer while participating in a Price-Determining-Activity (PDA), said acknowledgement being communicated over the global communications network;”</p>	<ul style="list-style-type: none"> • See Claim 18, element b.
<p>(c) determining the performance of the buyer based upon data received over the global communications network;</p>	<p><u>Defendant’s Statements and Depictions:</u></p> <ul style="list-style-type: none"> • See Claim 18(c) • The Clickriver system collects data from the buyer, including the keyword and ad text, over the internet. See Claim 1, element (c). • Clickriver calculates an ad Rank. The rank is based on the click-through-rate, max CPC, and how well the ad does against competing ads. See Claim 1, element (c).

- The rank depends on the performance of the submitted keywords and ad text. If the keywords are relevant to the content of the ad, the ad will receive a higher rank. If the keywords are not relevant to the content of the ad, the ad will receive a lower rank. See Claim 1, element (c).
- The buyer's actual cost per click depends on the buyer's ad rank. See Claim 1, element (c).
- The buyer's actual cost per click is directly related to the buyer's comparative performance. This is because the ad rank rates the buyer's ad against competing ads. The ad rank, in turn, affects price. Ads with better ranks may receive a lower cost per click, whereas ads with poor rankings will receive a lower cost per click. See Claim 1, element (c).

Analysis:

- This element involves determining the performance of the buyer based upon the data received over the global communications network.
- The data received is the keyword selection and ad text, which the Clickriver system receives from the buyer over the internet. The internet is a global communications network. See Claim 1, preamble.
- Determining the performance of the buyer based on the keyword selection and ad text is determining the performance of the buyer based upon the data received over the global communications network. Clickriver determines the buyer's performance based on the keyword selection and ad text.
- The ad rank depends on the relevance of the submitted keywords and ad text. More relevant ads receive a higher ad rank, resulting in a lower price. The buyer's actual cost per click depends on the buyer's ad rank.

	<ul style="list-style-type: none"> • The buyer’s actual cost per click is directly related to the buyer’s comparative performance. This is because the ad rank is a measure of the relevancy of the buyer’s ad compared to ads that it competes with, and the ad rank impacts the cost per click. • Thus, Clickriver determines the performance of the buyer based on the keyword selection and ad text. <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> • Thus, this element is satisfied.
<p>“and (d) assign a price to the product, said price being scaled to the performance of the buyer.”</p>	<ul style="list-style-type: none"> • See Claim 18, element d.