

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

PERFORMANCE PRICING, INC.,

Plaintiff,

v.

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

Defendants.

CASE NO. 2:07-cv-432 (LED)

JURY TRIAL DEMANDED

Parties' Compliance with Patent Rule 4-3

Pursuant to Patent Rule 4-3, Plaintiff Performance Pricing, Inc. and Defendants Google Inc., AOL LLC, Microsoft Corporation, Yahoo! Inc., and IAC Search & Media, Inc. submit this Joint Claim Construction and Prehearing Statement.

I. Pursuant to P. R. 4-3(a), the parties agree to the following:

| Claim term or phrase | Agreed construction |
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| “product” | “product” means “product or service” |
| “a second price” | “a second price” means “price for the product to be paid by the second buyer” |
| “the price,” “said price” | “the price” and “said price” mean “the price of the product” |
| Construction of certain nouns preceded by “the” and “a”: | <p>The following phrases use the articles “a” and “the” to indicate a repeated instance of the same thing:</p> <ul style="list-style-type: none"> • “a price range” and “the price range” refer to the same price range • “a product” and “the product” refer to the same product |

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| | <ul style="list-style-type: none"> • “a buyer” and “the buyer” refer to the same buyer • “at least one participant” and “the at least one participant” refer to the same participant or participants • “a first product” and “the first product” refer to the same product |
| “bid” | “bid” means “offer of a price in an auction” |

II. Pursuant to P. R. 4-3(b), the parties dispute the construction of the claim terms, phrases, or clauses set forth in the table attached as Exhibit A. For the convenience of the Court, the parties’ proposed constructions for the disputed claim terms and phrases, and each party’s identification of intrinsic and extrinsic evidence in support of their respective proposed constructions are found in Exhibit A.

III. Pursuant to P.R. 4-3(c):

A. Both parties anticipate the length of time necessary for the claim construction hearing is approximately 2 hours per side for a total of 4 hours.

IV. Pursuant to P.R. 4-3(d), the parties state as follows:

V. None of the parties anticipates calling any witnesses at the claim construction hearing.

A. Pursuant to P.R. 4-3(e), the parties do not believe that a prehearing conference prior to the claim construction hearing is necessary.

Dated February 12, 2009

Respectfully submitted,

By: /s/ Christin Cho

Christin Cho

CA State Bar No. 238173
Email: christin@dovellaw.com
Gregory S. Dovel
CA State Bar No. 135387
Email: greg@dovellaw.com
Sean Luner
CA State Bar No. 165443
Email: sean@dovellaw.com
Dovel & Luner, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, CA 90401
Telephone: 310-656-7066
Facsimile: 310-657-7069

S. Calvin Capshaw
State Bar No. 03783900
Elizabeth L. DeRieux
State Bar No. 05770585
Capshaw DeRieux, L.L.P.
Energy Centre
1127 Judson Road, Ste 220
P. O. Box 3999 (75606-3999)
Longview, Texas 75601-5157
Telephone: (903) 236-9800
Facsimile: (903) 236-8787
Email: capshaw@capshawlaw.com
Email: ederieux@capshawlaw.com

Robert M. Parker
State Bar No. 15498000
Email: rmparker@cox-internet.com
Robert Christopher Bunt
State Bar No. 00787165
Email: cbunt@cox-internet.com
Parker & Bunt, P.C.
100 East Ferguson, Ste. 1114
Tyler, TX 75702
Telephone: 903/531-3535
Facsimile: 903/533-9687

Franklin Jones, Jr.
State Bar No. 00000055
Email: maizieh@millerfirm.com
Jones & Jones, Inc., P.C.
201 W. Houston St.
P.O. Drawer 1249
Marshall, TX 75670

Otis W. Carroll, Jr.
State Bar No. 03895700
Email: fedserv@icklwa.com
6101 S. Broadway, Suite 500
Tyler, TX 75703

ATTORNEYS FOR PLAINTIFF
PERFORMANCE PRICING, INC.

By: _____ /s/
David A. Perlson

QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP
Charles K. Verhoeven
David A. Perlson
Jennifer A. Kash
Antonio R. Sistos
Emily C. O'Brien
50 California Street, 22nd Floor
San Francisco, California 94111
Telephone: (415) 875 6600
Facsimile: (415) 875 6700
charlesverhoeven@quinnemanuel.com
davidperlson@quinnemanuel.com
jenniferkash@quinnemanuel.com
antoniosistos@quinnemanuel.com
emilyobrien@quinnemanuel.com

BECK REDDEN & SECREST, L.L.P.
David J. Beck
Michael Ernest Richardson
One Houston Center
1221 McKinney St. Suite 4500
Houston, Texas 77010-2010
Telephone: (713) 951-3700
Facsimile: (713) 951-3720
jbeck@brsfirm.com
mrichardson@brsfirm.com

Attorneys for Defendant Google Inc.,
AOL LLC, IAC Search & Media,
Inc.

By: _____ /s/
Richard S.J. Hung

Michael A. Jacobs
mjacobs@mofo.com
Rachel Krevans
rkrevans@mofo.com
Richard S.J. Hung
rhung@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522

Michael E. Jones
mikejones@potterminton.com
POTTER MINTON, P.C.
110 North College, Suite 500
Tyler, Texas 75702
Telephone: (903) 597-8311
Facsimile: (903) 593-0846

Attorneys for Yahoo! Inc.

By: _____ /s/
Richard A. Cederoth

David T. Pritikin
Richard A. Cederoth
Laura L. Kolb
Sidley Austin LLP
1 South Dearborn Street
Chicago, Illinois 60603
Tel. (312) 853-7000
Fax (312) 853-7036
Email: dpritikin@sidley.com
rcederoth@sidley.com
lkolb@sidley.com

Eric H. Findlay
Brian Craft
Findlay Craft LLP
6760 Old Jacksonville Hwy.
Suite 101
Tyler, TX 75703
Tel. (903) 534-1100
Fax (903) 534-1137
E-mail: efindlay@findlaycraft.com
bcraft@findlaycraft.com

*Attorneys for Defendant Microsoft
Corp.*

Exhibit A

The Parties’ Proposed Constructions with Intrinsic and Extrinsic Evidence¹

| Claim Term | Plaintiff’s Construction | Defendants’ Construction |
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| <p>“Price-Determining-Activity”/ “PDA”</p> | <p><u>Proposal:</u></p> <p>“Price-Determining-Activity” and “PDA” mean “any activity or combination of activities, other than offering or accepting a price, that is used to determine the price paid for the product or service.”</p> <p><u>Intrinsic Evidence:</u> 1:55-57, 1:57-62, 2:23-25, 3:64-4:3, 4:3-11, 4:47-5:3, 5:23-28, 5:49-60, 7:14-24, 7:25-39, 7:54-65, 2:14-23, P0007-Abstract(Application, P0311- Decision on Appeal, Appeal No. 2005-0956(7/21/05), P0317- Decision on Appeal, Appeal No. 2005-0956(7/21/05), P0019- Abstract(Application), P0022- Summary and Description(Application), P0025- Detailed Description of the Invention(Application), P0191- Appellant’s Brief on Appeal(1/23/01),</p> <p><u>Extrinsic Evidence Support:</u> See Exhibit B, D, and G, including but not limited to:</p> <ul style="list-style-type: none"> • “collateral.” Random House Webster’s Dictionary (4th | <p><u>Proposal:</u></p> <p>"Inherently entertaining activity, such as a game, puzzle or quiz, that is used to set the product’s price, but otherwise is collateral to its sale."</p> <p><u>Intrinsic Evidence:</u> Abstract, 1:8-13, 1:49-62, 2:4-11, 2:17-20, 2:23-25, 2:28-35, 2:52-59, 3:51-54, 2:52-59, 3:64-4:11, 4:47-5:3, 5:22-27, 5:37-6:18, 6:49-50, 7:14-8:67, Fig. 2; Interview Summary (April 25, 2002); Appellant’s Supplemental Appeal Br. at *7-8, 10, 12, 16-20 (Aug. 5, 2002); Patent Application at *1 (June 29, 1999); Decision on Appeal at *1-2, 8 (July 21, 2005); Application No. 09/585,902, Office Action, at *8 (August 6, 2003) (P1306) (“Rossides discloses methods and systems that permit buyers to lock prices during collateral gaming activities.”).</p> <p>PCT application # PCT/US99/30811, titled: “SYSTEM AND METHOD FOR DETERMINING PRICES OF GOODS BASED ON THE BUYER’S PERFORMANCE PLAYING A GAME.” (See e.g., P000540).</p> <p>Korean patent application # 10-2000-7016629, titled “SYSTEM AND METHOD FOR DETERMINING THE</p> |

¹ Defendants have not received final versions of the depositions of Wayne Lin or Neal Cohen, which occurred on 1/28/09 and 2/11/09. Defendants reserve the right to rely on additional extrinsic evidence from those depositions.

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| | <p>Edition). [P 22768]</p> <ul style="list-style-type: none"> • “collateral.” The American Heritage Dictionary of the English Language (4th Edition). [P 22635] • “collateral.” Webster’s Third New International Dictionary Unabridged. [P 22742] | <p>PRICES OF GOODS BASED ON THE BUYER’S PERFORMANCE PLAYING A GAME.” (<i>See e.g.</i>, VIP00230); Applicant’s Written Amendment at DEF00005653 (“The present application inventions deals with a system and method of doing business over a global communications network including the Internet, and specifically provides the system and method of determining a merchandise price, wherein the transaction price between a buyer and a seller is determined based on the game activities of a buyer who users various forms of competitions and entertainments.”); DEF00005656 (“while the cited invention provides discount services according to the buying performance of a buyer, the present application invention provides a discount service for a certain activity such as a game instead of buying depending upon the activity performance.... the objective of the present application inventions is completely different from said cited invention in that any non-purchase activities that can be enjoyed by a buyer may have influence on the pricing between a buyer and a seller.”); DEF00005658 (“in the present application invention, buyers can have an opportunity to buy a product at a price lower than its original price within the prescribed price range if certain performance on a specific activity is achieved and also obtain incidental gains of enjoying entertainments from said activities”); DEF00005659 (“Present Application Invention . . . Provides a discount service for a certain activity such as a game for not buying depending on the activity performance.”; “a discount service is provided by the performance of non-purchase activities”).</p> <p>Japanese Patent Application # 0334446373, Office Action (E.g., “Cited</p> |
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| | | <p>Literature 1 describes . . . having the purchaser play a game Cited Literature 2 describes . . . a chance to play a game Cited Literature 3 describes . . . an electronic commerce transaction system wherein a game is made to be played Cited Literature 4 describes a casino . . . wherein a user selects a desired game Cited Literature 5 describes . . . providing an entertaining theme such as a game”) (See DEF00005603-5604).</p> <p><u>Extrinsic Support:</u></p> <p>E-mail from Wayne Lin to Joseph Lee (e.g., “Also, if a buyer changes the class, date of travel, or destination, the product is already different.”) (P20941-20942).</p> <p>Priceplay website:</p> <p>DEF00007067 (“The buyers who want to buy at your current price will still do so. Those potential buyers who visit your web site but do not want to buy at your list price will now have a chance to Play For Price”); DEF00007014 (describing PricePlay as “an add-on” for existing e-commerce sites); DEF00007025-27 (“(“ . . . a fun, enjoyable, and rewarding engagement . . . For example, an etailer of used golf clubs can enable interactive pricing on all or some of their web pages . . . A site visitor may choose an online golf game to play for some of the golf clubs.”).</p> <p><u>Trademark Applications:</u></p> <p>VIP-00017 (Mark “PLAY YOUR PRICE!”: Class of goods/services: “Electronic retail services via computer, featuring entertainment-enabled price-determining activities such as video games, puzzles, and contests, which are used to determine the purchase price of a wide variety of goods and services.”);</p> |
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| | | <p>VIP-00050 (Mark “SHOULD SHOPPING BE THIS FUN?”; Class of goods/services: “Electronic retail services via computer, featuring entertainment-enabled price-determining activities such as video games, puzzles, and contests, which are used to determine the purchase price of a wide variety of goods and services.”).</p> <p>Sabra Chartrand, <i>Patents: Patent Application of Web Sends Inventor to the Drawing Board</i>, N.Y. TIMES (April 2, 2001) (“Mr. Lin’s invention . . . includes, Mr. Cohen said, a method of setting prices for products sold on the Internet by playing a game.”) (See VIP00068).</p> <p>“Business Concept” (e.g., “The essence of our business models: Buyers will have fun while buying.”) (P370).</p> <p>“Invention: Entertainment Enabled Trading Portal” (e.g., “The method of electronically utilizing entertainment to determine transaction prices between buyers and sellers”) (P396-397).</p> <p>AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4TH ED. 2000) 362 - collateral - “of a secondary nature; subordinate”</p> <p>DICTIONARY.COM UNABRIDGED (v 1.1), at http://dictionary.reference.com/browse/collateral - collateral - “accompanying; auxiliary”; “aside from the main subject, course, etc.; secondary”</p> <p>WEBSTER’S THIRD NEW INT’L DICTIONARY (2002) 444 - collateral - “accompanying as a secondary...activity”; “ancillary”</p> <p>RANDOM HOUSE WEBSTER’S DICTIONARY (2001) 138 - collateral - “accompanying; auxiliary”; “secondary or incidental”</p> |
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| | | <p>MERRIAM-WEBSTER’S DICTIONARY OF LAW (1996), at http://dictionary.reference.com/browse/collateral - “accompanying as a secondary...activity”</p> <p>Lin Deposition (rough)</p> <p>141:11 - 142:1 (“Q Okay. Let me ask the question again then. Is it correct that in all of the systems that you developed over the years that practice the invention of the 253 patent, the activities available to potential bidders were either puzzles, games or quizzes?”</p> <p>A They included games, puzzles and quizzes, yes.</p> <p>Q Nothing else?</p> <p>A I can go back and look at the website and see if I can find anything else.</p> <p>Q To the best of your recollection, the activities available to potential bidders that bidders could use to try to influence the price were all either games or puzzles or quizzes, correct?</p> <p>A It includes games, puzzles and quizzes, correct.”)</p> |
| <p>“performance of the buyer”</p> | <p><u>Proposal:</u></p> <p>(i) “performance of the buyer” means “the buyer’s actions or deeds in the Price-Determining-Activity”</p> <p><u>Intrinsic Evidence:</u> 2:23-28, 2:52-56, 5:60-66, 6:13-16, 1:62-67, P0138-Response (8/20/01), P0155-Appellant’s Brief on Appeal(11/15/01), P0180-181-</p> | <p><u>Proposal:</u></p> <p>the buyer’s level of success (at the Price-Determining-Activity)</p> <p><u>Intrinsic Evidence:</u> 1:57-62, 2:4-8, 2:23-25, 2:35-43, 2:47-51, 3:64-4:11, 4:38-43, 5:22-27, 5:60-67, 6:13-16, 7:40-52, 7:62-65, 8:3-5, 8:19-23, claim 31; Decision on Appeal at *2 (July 21, 2005); Application No. 09/585,902, Office Action, at *3 (August 6, 2003) (P1301) (“The priority documents are</p> |

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| <p>Appellant’s Brief on Appeal(1/23/01), P0240-Supplemental Brief(8/8/02), P0243-Supplemental Brief(8/8/02), P0283-Examiner’s Answer(10/1/02), P0029-Detailed Description of the Invention(Application)</p> <p><u>Extrinsic Evidence Support:</u> See Exhibit B, C, and G including but not limited to:</p> <ul style="list-style-type: none"> • “performance.” <i>Random House Webster’s Dictionary</i> (4th ed. 2001). [P 22776] • “performance.” The Am. Heritage® Dictionary of the English Language (4th ed. 2000). [P 22643] • “performance.” Dictionary.com Unabridged (v 1.1), at http://dictionary.reference.com/browse/performance. [P 22701] • “performance.” WordNet® 3.0., available at http://dictionary.reference.com/browse/performance. [P 22702] | <p>directed to determining the <i>price</i> of the product according to a buyer’s performance rating.”); Application No. 11/262,527, Supplemental Preliminary Amendment, at *2-10 (March 30, 2007) (P001937-45).</p> <p>Korean patent application # 10-2000-7016629, Claim 20 (“said PDA comprises the computer-executable code that are sent to the buyer via the global communication network”) (DEF5639).</p> <p>Japanese Patent Application # 0334446373, Claim 9 (“... the price determining activity . . . is executed by a terminal device on the side of the purchaser . . .”) (See DEF00005608).</p> <p><u>Extrinsic Support:</u></p> <p>WEBSTER’S THIRD INT’L DICTIONARY 1678 - performance - “the ability to perform: capacity to achieve a desired result: EFFICIENCY <senescence represents a marked decline in function and ~ -- George Lawton>”; “the manner of reacting to various stimuli: BEHAVIOR <the ~ of the stock market>”</p> <p>RANDOM HOUSE UNABRIDGED DICTIONARY 1439 - performance - “the manner in which or the efficiency with which something fulfills its intended purpose”</p> <p>OXFORD ENCYCLOPEDIA ENGLISH DICTIONARY 1079 (1991) - performance - “a person’s achievement under test conditions etc. (<i>put up a good performance</i>)”</p> <p>NEW OXFORD AMERICAN DICTIONARY (2d. ed. 2005) - performance - “an action, task, or operation, seen in terms of how successfully it was performed: <i>pay increases are now being linked more</i></p> |
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| | | <p><i>closely to performance”)</i></p> <p>BusinessDictionary.com - performance - “General: Accomplishment of a given task measured against preset standards of accuracy, completeness, cost, and speed”, <i>available at</i> http://www.businessdictionary.com/definition/performance.html (last visited Dec. 18, 2008)</p> <p>AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4TH ED. 2000) 1306 - performance - “The way in which someone or something functions”</p> <p>DICTIONARY.COM UNABRIDGED (V 1.1), at http://dictionary.reference.com/browse/performance - performance - “the manner in which or the efficiency with which something reacts or fulfills its intended purpose”</p> <p>WORDNET 3.0 (2006), at http://dictionary.reference.com/browse/performance - performance - “process or manner of functioning or operating... ‘they compared the cooking performance of each oven;’ ‘the jet's performance conformed to high standards’”</p> <p>“Invention: Entertainment Enabled Trading Portal” (e.g., “The final price of the product . . . will then be determined according to the outcome of the chosen mechanism such as the result of a future [] NBA Basketball game or NFL Football game or said video game.”) (P396-398).</p> |
| <p>“first” and “second”</p> | <p><u>Proposal:</u></p> <p>(ii) The terms “first” and “second” are used to distinguish one instance of the same thing from another. For example, the phrase “second request”</p> | <p><u>Proposal:</u></p> <p>the “first” request must precede and is separate from the “second” request</p> <p><u>Intrinsic Evidence</u></p> <p>3:48-50, 4:26- 5:18, 5:37-67, 8:14-23,</p> |

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| | <p>means a request other than the “first request.” The terms “first” and “second” do not refer to time sequence.”</p> | <p>Fig. 1; Patent Application at 18 (June 29, 1999); Applicant’s Amendment at 6 (mailed April 2, 2001).</p> |
| <p>“auction”</p> | <p><u>Proposal:</u></p> <p>(iii) “auction” means “process for selling a product or service based on bids.”</p> <p><u>Intrinsic Evidence:</u> 1:31-35, 1:41-43, P00165-Appellant’s Brief on Appeal(11/15/01), P0254-Appellant’s Supplemental Appeal Brief(7/31/02)</p> <p><u>Extrinsic Evidence Support:</u> See Exhibit B, D, and G including but not limited to:</p> <ul style="list-style-type: none"> • “auction.” Random House <i>Webster’s Dictionary</i> (4th ed. 2001). [P 22766] • “auction.” " Webster’s <i>Third New Int’l Dictionary</i> (4th ed. 2001). [P 22739] • “auction.” <i>The Am. Heritage® Dictionary of the English Language</i> (4th ed. 2000) [P 22632] | <p><u>Proposal:</u></p> <p>a public sale of property to the highest bidder (as by successive increased bids)</p> <p><u>Intrinsic Evidence:</u> 1:31-35, 1:41-43, 4:33-43.</p> <p><u>Extrinsic Support:</u> WEBSTER’S THIRD INT’L DICTIONARY (2002) (auction: 1: a public sale of property to the highest bidder (as by successive increased bids)).</p> <p>AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4TH ED. 2000) 117 - auction - “public sale of property...to the highest bidder”</p> <p>DICTIONARY.COM UNABRIDGED (v 1.1), at http://dictionary.reference.com/browse/auction - auction - “publicly held sale at which property or goods are sold to the highest bidder”</p> <p>WEBSTER’S THIRD NEW INT’L DICTIONARY (2002) 142 - auction - “public sale of property...to the highest bidder”</p> <p>RANDOM HOUSE WEBSTER’S DICTIONARY (2001) 45 - auction - “public sale at which property or goods are sold to the highest bidder”</p> <p>WORDNET 3.0 (2006), at http://dictionary.reference.com/browse/auction - auction - “the public sale of something to the highest bidder”</p> |

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| | | <p>MERRIAM-WEBSTER’S DICTIONARY OF LAW (1996), at http://dictionary.reference.com/browse/auction - auction - “a public sale of property to the highest bidder”</p> |
| <p>“price being . . . scaled to the performance of the buyer”</p> | <p><u>Proposal:</u></p> <p>“price being . . . scaled to the performance of the buyer” means “price being adjusted to a standard according to the performance of the buyer, such that achieving a better performance level results in a lower price and achieving a worse performance level results in a higher price”</p> <p><u>Intrinsic Evidence:</u> 2:35-40, 2:23-28, 2:52-56, 2:44-47, P0022-Summary(Application), P0023-Summary Application, P0311-Decision on Appeal(6/21/05), P0181-Appellant’s Brief on Appeal(1/23/01), P0243-Supplemental Brief(8/8/02),</p> <p><u>Extrinsic Evidence Support:</u> See Exhibit B, C, and G including but not limited to:</p> <ul style="list-style-type: none"> • “scale.” Random House <i>Webster’s Dictionary</i> (4th ed. 2001). [P 22782] • “scale.” Dictionary.com Unabridged (v 1.1) at http://dictionary.reference.com/browse/scale. [P 22723] • “scaled.” The Am. Heritage® Dictionary of the English Language (4th ed. 2000). [P 22650] | <p><u>Proposal:</u></p> <p>“price being assigned from a predetermined set of graduated prices and corresponding performance levels, in which a lower price always corresponds to a better performance in the PDA and a higher price always corresponds to a worse performance in the PDA”</p> <p><u>Intrinsic Evidence:</u> Abstract, 2:23-28; 2:35-59, 3:51-54, 4:38-43, 5:23-28, 5:49-52, 5:38-48, 5:60-67, 6:13-15, 6:42-51, 7:16-21, 7:34-52, 7:66-8:57, 7:64-8:5, 8:14-23; Fig. 2; Applicant’s Amendment at 4 (May 17, 2001); Appellant’s Supplemental Appeal Br. at *14-15 (Aug. 5, 2002); Decision on Appeal at *2 (July 21, 2005).</p> <p>Japanese Patent Application # 0334446373, Claim 1 (“[A] step for determining the price of a product within said range of prices according to the action of the purchaser at least partially by extracting the data the relates to the price determining activity of the purchaser that is stored in said database and associating it with a price that corresponds to an action that has been set in advance”) (DEF5607; <i>see also</i> DEF5608, DEF5611, DEF5614-5615); Claim 16 (“said computer server executes a step that determines a range of prices in advance so that prices that show a minimum value associated with the best action and a maximum value that is associated with the worst action are assigned to a product within a range of prices”) (<i>See</i></p> |

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| | | <p>DEF00005608); Amendment (“and a step for determining the price of a product within said range of prices according to the action of the purchaser at least partially by associating the result of an action in relation to the price determining activity of a purchaser that is stored in said database with a preset price corresponding to an action and for confirming with said purchaser whether or not said price will be determined to be the ultimate purchase price”) (DEF00005619).</p> <p><u>Extrinsic Support:</u> RANDOM HOUSE UNABRIDGED DICTIONARY 1709 - scale - “to adjust in amount according to a fixed scale or proportion (often fol. by <i>down</i> or <i>up</i>): <i>to scale down wages</i>”</p> <p>RANDOM HOUSE UNABRIDGED DICTIONARY 1709 - scale - “a table of graduated rates, as of prices or wages: <i>These unions use different scales.</i>”</p> <p><u>PricePlay website</u> <i>See e.g.,</i> DEF00007026 (“The better the performance during the game, the lower the price”); DEF00007042 (“You play in an Interactive Pricing Activity, the better your performance the lower the price”); DEF00008062 (same); DEF00008212 (“Everyone’s price is different and scaled to his or her own performance . . . The better or longer the buyer performs or participates in a PDA the better the prices!”).</p> <p>AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4TH ED. 2000) 1553 - scale - “a progressive classification, as of size, amount, importance, or rank [as in scale of 1-10]”; “to make in accord with a particular proportion or scale;” “to rise in steps or stages”</p> |
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| | | <p>DICTIONARY.COM UNABRIDGED (v 1.1), at http://dictionary.reference.com/browse/scale - scale - “a succession or progression of steps or degrees; graduated series”; “a table of graduated rates, as of prices or wages”; “to adjust in amount according to a fixed scale or proportion”</p> <p>WEBSTER’S THIRD NEW INT’L DICTIONARY (2002) 2023 - scale - “a graduated or ordered series of degrees, stages, or classes”; “to arrange in a graduated series”; “increase or reduce according to a fixed ratio”; “to rise in a graduated series”</p> <p>RANDOM HOUSE WEBSTER’S DICTIONARY (2001) 641 - scale - “a progression or series of steps or degrees”</p> <p>Sabra Chartrand, <i>Patents: Patent Application of Web Sends Inventor to the Drawing Board</i>, N.Y. TIMES (April 2, 2001) (“The higher the score achieved by a player, the lower the price he will pay for a product he wants to buy.”) (See VIP00068).</p> |
| <p>“accepting a first request from the buyer to buy the product”</p> | <p><u>Proposal:</u></p> <p>(iv) “accepting a first request from the buyer to buy the product” means “receiving with consent or approval a request from the buyer to buy the product or service”</p> <p><u>Intrinsic Evidence:</u> 2:15-23, 1:31-37, 4:36-43, 1:21-25, 1:63-2:3, 1:55-62, 5:28-36, 2:20-23</p> <p><u>Extrinsic Evidence Support:</u> See Exhibit B, D, G including but not limited to:</p> <ul style="list-style-type: none"> • “accept.” Webster’s <i>Third</i> | <p><u>Proposal:</u></p> <p>“accepting from the buyer a selection of the product to buy”</p> <p><u>Intrinsic Evidence:</u> Abstract, 2:60-65, 3:48-50, 3:38-41, 4:25-33, 5:44-48, Fig. 1; Application No. 09/585,902, Office Action, at *6 (August 6, 2003) (P1304) (E.g., “Buyers select items to be purchased by placing a request to buy a product for a price that is to be determined within a price range.”).</p> |

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| | <p><i>New Int'l Dictionary</i> (4th ed. 2001). [P 22736 – 22737]</p> <ul style="list-style-type: none"> • "accept." <i>The Am. Heritage® Dictionary of the English Language</i> (4th ed. 2000). [P 22629] • "accept." <i>Random House Webster's Dictionary</i> (4th ed. 2001). [P 22764] | |
| <p>"accepting a second request from the buyer to allow the price to be determined"</p> | <p><u>Proposal:</u></p> <p>(v) "accepting a second request from the buyer to allow the price to be determined" means "receiving with consent or approval a second request from the buyer to allow the price to be determined"</p> <p><u>Intrinsic Evidence:</u> 2:15-23, 1:31-37, 4:36-43, 1:21-25, 1:63-2:3, 1:55-62, 5:28-36, 2:20-23, 2:60-3:7</p> <p><u>Extrinsic Evidence Support:</u> <i>See</i> Exhibit B, C, D, and G including but not limited to:</p> <ul style="list-style-type: none"> • "determined." <i>Random House Webster's Dictionary</i> (4th ed. 2001). [P 22772] • "determined." <i>Webster's Third New Int'l Dictionary</i> (4th ed. 2001). [P 22746] • "determined." <i>The Am. Heritage® Dictionary of the English Language</i> (4th ed. 2000). [P 22639] • "determine." <i>Webster's Third New Int'l Dictionary</i> (4th ed. 2001). [P 22746] • "determine." <i>The Am. Heritage® Dictionary of the English Language</i> (4th ed. | <p><u>Proposal:</u></p> <p>"accepting a request from the buyer that the price of the selected product be determined"</p> <p><u>Intrinsic Evidence:</u> 4:26-5:18, 5:37-67, Fig. 1; Patent Application at 18 (June 29, 1999); Applicant's Amendment at 6 (mailed April 2, 2001).</p> |

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| | <p>2000). [P 22639]</p> <ul style="list-style-type: none"> • “determine.” <i>Random House Webster’s Dictionary</i> (4th ed. 2001). [P 22772] • “determine.” <i>Dictionary.com Unabridged (v 1.1)</i>, at http://dictionary.reference.com/browse/determine. [P 22679] | |
| “price range” | <p><u>Proposal:</u></p> <p>“price range” means “upper and lower bounds within which the price may vary”</p> <p><u>Intrinsic Evidence:</u> 2:35-40, 2:23-25, 2:52-57, 2:44-47, 2:60-3:7</p> <p><u>Extrinsic Evidence Support:</u> See Exhibit B, D, and G including but not limited to:</p> <ul style="list-style-type: none"> • “range.” <i>Webster’s Third New Int’l Dictionary</i> (4th ed. 2001). [P 22751] • “range.” <i>The Am. Heritage® Dictionary of the English Language</i> (4th ed. 2000). [P 22646] • “range.” <i>Random House Webster’s Dictionary</i> 594-595 (4th ed. 2001). [P 22778 – 22779] | <p><u>Proposal:</u></p> <p>“specified upper and lower bounds within which the price may vary”</p> <p><u>Intrinsic Evidence:</u> Abstract, 2:20-23, 2:47-56, 3:61-4:3, 4:47-54, 5:37-6:18, 7:40-52, 8:14-23; Appellant’s Supplemental Appeal Br. at *16 (Aug. 5, 2002); Decision on Appeal at *1 (July 21, 2005).</p> <p>Korean patent application # 10-2000-7016629, Response to Office Action (“According to the system and method that determine the merchandise price based on game activities of the buyer with the configuration above, such effects are available that buyers can have an opportunity to buy a product at a price lower than its original price within the prescribed price range if certain performance on a specific activity is achieved and also obtain incidental gains from said activities.”) (DEF5656).</p> <p>Japanese Patent Application # 0334446373, Response to Office Actoin (E.g., “[T]he transaction price is determined by creating a correspondence between a certain price belt (a range of prices) that is based on the consent and understanding of the purchaser”) (DEF5616).</p> |
| “master controller” | <p><u>Proposal:</u></p> | <p><u>Proposal:</u></p> |

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| | <p>“master controller” means “device or subsystem that has overall control over other devices or systems”</p> <p><u>Intrinsic Evidence:</u> 4:30-34, 4:18-25, P0026-Abstract (Application), P0086-Office Action (2/8/01), P0122-123-Office Action (7/24/01), P0211-212-Office Action (2/25/02)</p> <p><u>Extrinsic Evidence Support:</u> See Exhibit B, C, D, E, F, and G including but not limited to:</p> <ul style="list-style-type: none"> • “controller.” Oxford Dictionary of Computing 114 (5th ed. 2004). [P 22760] • “controller.” Microsoft Computer Dictionary 128 (5th ed. 2002). [P 22756] • “controller.” <i>WordNet® 3.0.</i>, available at http://dictionary.reference.com/browse/controller. [P 22667] • “master.” <i>Random House Webster’s Dictionary</i> (4th ed. 2001). [P 22769] • “master.” <i>The Am. Heritage® Dictionary of the English Language</i> (4th ed. 2000). [P 22636] | <p>“centralized server”</p> <p><u>Intrinsic Evidence:</u> 3:22-37, 3:51-56, 4:18-25, 4:30-34, 6:19-41, 6:60-7:6, Fig. 2, Fig. 3.</p> |
| <p>“description of a product”</p> | <p><u>Proposal:</u></p> <p>No construction necessary.</p> <p><u>Alternate Proposal:</u></p> <p>“description of a product” means “an identification or account of characteristics or features of a product or service”</p> | <p><u>Proposal:</u></p> <p>information sufficient to identify a particular product</p> <p><u>Intrinsic Evidence:</u> 3:48-50, 3:51-54, 4:33-36, 5:44-48, 6:42-59; 7:16-24, 7:58-65, Fig. 1.</p> <p>Japanese Patent Application # 0334446373, Claim 1 (“a step for</p> |

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| | <p><u>Intrinsic Evidence:</u> 2:60-3:7</p> <p><u>Extrinsic Evidence Support:</u> <i>See</i> Exhibit B, C, D, and G including but not limited to:</p> <ul style="list-style-type: none"> • “describe.” The Am. Heritage® Dictionary of the English Language (4th ed. 2000). [P 22638] • “describe.” <i>Webster’s Third New Int’l Dictionary</i> 610 (4th ed. 2001). [P 22745] • “describe.” <i>Random House Webster’s Dictionary</i> 191 (4th ed. 2001). [P 22771] • “description.” <i>Random House Webster’s Dictionary</i> 191 (4th ed. 2001). [P 22771] • “description.” <i>Webster’s Third New Int’l Dictionary</i> 610 (4th ed. 2001). [P P 22745] • “description.” The Am. Heritage® Dictionary of the English Language (4th ed. 2000). [P 22638] • “description.” <i>WordNet®</i> 3.0., available at http://dictionary.reference.com/browse/description. [P 22676] | <p>transmitting detailed information to a purchaser about a product via a telecommunications network”) (<i>See</i> DEF00005593)</p> <p><u>Extrinsic Support:</u> WEBSTER’S THIRD INT’L DICTIONARY 610 - description - “an individualizing or identifying designation”; "a statement of the properties of a thing or its relations to others things serving to identify it."</p> |
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| <p>“data representing a plurality of products”</p> | <p><u>Proposal:</u></p> <p>1) “data representing a plurality of products” means “data communicating information about two or more products or services”</p> <p><u>Intrinsic Evidence:</u> 3:8-21, 3:22-37</p> <p><u>Extrinsic Evidence Support:</u> <i>See Exhibit B, C, D, and G including but not limited to:</i></p> <ul style="list-style-type: none"> • “representing.” <i>Webster’s Third New Int’l Dictionary</i> (4th ed. 2001). [P 22752] • “represent.” <i>The Am. Heritage® Dictionary of the English Language</i> 1480 (4th ed. 2000). [P 22648] • “represent.” <i>Random House Webster’s Dictionary</i> 612 (4th ed. 2001). [P 22780] • “represent.” <i>WordNet® 3.0.</i>, available at http://dictionary.reference.com/browse/represent. [P 22715] • “plurality.” <i>Webster’s Third New Int’l Dictionary</i> 1745 (4th ed. 2001). [P 22749] • “plurality.” <i>The Am. Heritage® Dictionary of the English Language</i> 1351 (4th ed. 2000). [P 22644] • “plurality.” <i>Random House Unabridged Dictionary</i> (2006), available at http://dictionary.reference.com/browse/plurality. [P 22707] • “plural.” <i>Random House</i> | <p><u>Proposal:</u></p> <p>data sufficient to identify two or more particular products</p> <p><u>Intrinsic Evidence:</u> 3:48-50, 4:33-36, 5:44-48, 6:42-59, 7:16-24, 7:53-65, Fig. 2.</p> <p><u>Extrinsic Evidence Support:</u> AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4TH ED. 2000) 1480 - represent - “To present clearly to the mind”</p> <p>WEBSTER’S THIRD NEW INT’L DICTIONARY (2002) 1926 - represent - “to bring clearly before the mind,” “to present in words; set forth; describe; state”</p> |
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| | <p><i>Webster's Dictionary</i> (4th ed. 2001). [P 22776]</p> <ul style="list-style-type: none">• “plural.” <i>Webster's Third New Int'l Dictionary</i> 1745 (4th ed. 2001). [P 22749]• “plural.” <i>Random House Unabridged Dictionary</i> (2006), available at http://dictionary.reference.com/browse/plural. [P 22705] | |
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| <p>“accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product/ accept acknowledgement from the buyer representing an intent of the buyer to buy the first product”</p> | <p><u>Proposal:</u></p> <p>(i) “accepting acknowledgement from the buyer representing an intent of the buyer to buy the first product” means “receiving with consent or approval an acknowledgment from the buyer representing an intent of the buyer to buy the first product or service.”</p> <p>(ii) “accept acknowledgement from the buyer representing an intent of the buyer to buy the first product” means “receive with consent or approval an acknowledgment from the buyer representing an intent of the buyer to buy the first product or service.”</p> <p><u>Intrinsic Evidence:</u> 3:8-21, 3:22-37</p> <p><u>Extrinsic Evidence Support:</u> See Exhibit B, C, D, and G including but not limited to:</p> <ul style="list-style-type: none"> • See definitions for “accepting” and “representing” above. • “acknowledgment.” <i>Webster’s Third New Int’l Dictionary</i> (4th ed. 2001). [P 22737] • “acknowledgment.” <i>WordNet® 3.0.</i>, available at http://dictionary.reference.com/browse/acknowledge. [P | <p><u>Proposal:</u></p> <p>accepting from the buyer a selection of the first product to buy</p> <p><u>Intrinsic Evidence:</u> Abstract, 3:8-18, 3:22-34, 3:48-50, 3:51-54, 3:38-41 4:28-36, 5:44-48, Figs. 1 and 2</p> <p><u>Extrinsic Evidence:</u> Letter from Neel Chatterjee to CJ Wolf and accompanying claim charts (OHS-PP00245-249) (Claim 18, “accepting acknowledgement ...” term: “The participant then selects one of the game-icons...”)</p> |
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| | <p>22653]</p> <ul style="list-style-type: none"> • “acknowledge.” <i>Random House Webster’s Dictionary</i> 7 (4th ed. 2001). [P 22765] • “acknowledge.” <i>Webster’s Third New Int’l Dictionary</i> 17 (4th ed. 2001). [P 22768] • “acknowledge.” The Am. Heritage® Dictionary of the English Language 14 (4th ed. 2000). [P 22630] | |
| <p>Ordering of the steps of the asserted claims</p> | <p><u>Proposal:</u></p> <p>Plaintiff asserts that this is not a limitation.</p> | <p><u>Proposal:</u></p> <p>Defendants assert that the steps of the asserted claims must be performed in order.</p> <p><u>Intrinsic Evidence:</u></p> <p>3:48-50, 4:26-6:18, 8:14-23, Fig. 1; Patent Application at 18 (June 29, 1999); Applicant’s Amendment at 6 (mailed April 2, 2001).</p> |