EXHIBIT D

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January 15, 2009

VIA ELECTRONIC MAIL

Christin Cho
Dovel & Luner LLP
201 Santa Monica Boulevard, Suite 600
Santa Monica, CA 90401

Re: Performance Pricing, Inc. v. Google Inc. et al.

Dear Christin:

I write in response to your emails of January 12, 2009 regarding Google's Response to Interrogatory No. 1 of Plaintiff Performance Pricing Inc.'s First Set of Interrogatories and Performance Pricing's 30(b)(6) Notice to Google Inc. While you indicated in our call on January 13 that Plaintiff views these as separate requests, we believe they should be dealt with together and have responded accordingly.

In your email you state that "[a]s you suggested in our call last Thursday, Plaintiff requests that Google supplement its responses to Performance Pricing's first set of interrogatories." Google did not "suggest" that Plaintiff do this. Google simply asked why Plaintiff did not pursue its requested discovery by first asking Google about its response to Interrogatory No. 1.

You also request in your email that Google supplement its response to Interrogatory No. 1 within two weeks because you state "time is of the essence." Your email does not explain why time is of the essence for this supplementation. Indeed, the facts suggest otherwise. Google provided this response almost four months ago. Yet Plaintiff waited until this week to seek additional information in this response. Moreover, discovery in this matter does not close for another nine months. And the requested supplementation of Plaintiff's interrogatory at this time is overbroad

and premature for the same reasons as Plaintiff's Rule 30(b)(6) notice. See *McCormick-Morgan, Inc., v. Teledyne Industries, Inc.*, 134 F.R.D. 275 (N.D. Cal. 1991).

In all events, in an effort to reach a reasonable compromise on these issues, we propose the following:

First, Google will supplement its response to Plaintiff's Interrogatory No. 1 to provide further explanation of why Google contends that Plaintiff's Infringement Contentions do not demonstrate that the identified elements of the '253 Patent are present in the accused products. Given that Google would be supplementing this contention interrogatory, we ask that Plaintiff also agree to supplement its responses to Google's contention interrogatories. In particular, we request that Plaintiff supplement its response to Defendants' Interrogatories Nos. 4 and 6, and Google's Individual Interrogatory No. 3.

Defendants' Interrogatory No. 4 requested Plaintiff to

> Identify and describe in detail all the manners or techniques by which the '253 PATENT improved upon the PRIOR ART, added functionality that did not exist in the PRIOR ART, or provided a variation or upgrade of the PRIOR ART, and for each such claimed improvement, added functionality, or variation or upgrade, state whether PLAINTIFF contends it was a non-obvious or unpredictable improvement, addition of functionality, variation or upgrade and why and identify all facts in support thereof.

Defendants in their Amended Invalidity Contentions served on October 30, 2008 identified a number of prior art references to the '253 Patent. Defendants also illustrated how specific elements of the claims of the '253 Patent were met by these prior art references. Interrogatory No. 4 explicitly asks Plaintiff to identify all manners or techniques by which the '253 Patent "added functionality that did not exist in the PRIOR ART." However, Plaintiff has not in response to this interrogatory identified how the alleged invention of the '253 Patent added functionality that did not exist in the prior art identified by the Defendants or how that art fails to meet each element of the asserted claims of the '253 Patent. We ask that Plaintiff please supplement its response to do so.

Defendants' Interrogatory No. 6 requested Plaintiff to

> State PLAINTIFF's contentions as to what constitute the level of skill of a person of ordinary skill in the art of the subject matter of the '253 PATENT as of the filing date of the '253 PATENT.

In response, Plaintiff refused to answer this interrogatory, instead stating that it had "not yet determined the specific qualifications of one of ordinary skill in the art at the time of the invention" and "expects that this information will be obtained in the form of opinions from

expert consultants and will disclose those opinions at the appropriate time." We ask that Plaintiff supplement its response and provide an answer to this interrogatory with Plaintiff's contentions.

Google's Individual Interrogatory No. 3 requested Plaintiff

> If you contend that you are entitled to any monetary recovery as a result of alleged INFRINGEMENT of the '253 PATENT by GOOGLE, state whether you contend that you are entitled to lost profits or a reasonable royalty, and state all facts and reasons upon which you rely in support of your contention, such that if you contend you are entitled to an award of lost profits damages, you identify each of your products you allege falls within the scope of any '253 PATENT claim and state the total sales annually in units and dollars from its introduction to the present, and if you contend you are entitled to an award of reasonable royalty damages, state what you assert to be a reasonable royalty to be paid by GOOGLE under 35 U.S.C. § 284, including the complete factual bases on which you base your calculation of such royalty rate.

Plaintiff stated that it seeks damages in the amount of a reasonable royalty, but did not "state what you assert to be a reasonable royalty to be paid" under 35 U.S.C. § 284, "including the complete factual bases on which you base your calculation of such royalty rate." Instead, Plaintiff stated that it "will provide a detailed computation of damages after damages-related discovery is made available by defendants and after such information has been evaluated by an expert." Damages-related discovery has been made available. Please provide this computation of damages.

We ask that Plaintiff supplement its responses to these contention interrogatories, in order to fully answer the requests set out therein. Please confirm that Plaintiff will supplement its response to these interrogatories to provide the information explicitly requested by each contention interrogatory.

Additionally, the discovery order in this matter required a complete computation of any category of damages claimed by any party to this action. Plaintiff's disclosure, served on October 22, 2008, stated that Plaintiff would provide a "detailed computation of damages after damages-related discovery is made available by defendants and after such information has been evaluated by an expert." Google has produced damages-related documents as part of its relevant document production in this matter. Plaintiff should similarly supplement its disclosure with its computation of damages.

Second, as part of its suggested compromise, Google would agree to provide a Rule 30(b)(6) witness to testify in response to a reasonably framed deposition notice regarding how the operation of the relevant aspects of Google's accused products identified in Plaintiff's infringement contentions work. This, along with supplemental interrogatory responses, should provide Plaintiff more than sufficient information regarding Google's non-infringement contentions at this time.

Please let us know whether Plaintiff agrees to the compromise outlined in this letter, and we can work together on a schedule for providing the information detailed herein.

As always, we remain willing to meet and confer to resolve any discovery issues, and hope that you similarly remain willing to work together on these issues in a timely and efficient manner. If you believe that a live discussion to discuss these issues would be helpful, we are available at your convenience.

Cordially,

/s/ Emily C. O'Brien

Emily C. O'Brien