

# **EXHIBIT D**

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November 25, 2008

VIA EMAIL

Neal M. Cohen  
Vista IP Law Group LLP  
2040 Main St., 9th Floor  
Irvine, CA 92614

Re: Privilege Log for Neal M. Cohen and Vista IP Law Group in *Performance Pricing, Inc. v. Google, Inc. et al.*, Case No. 2:07-cv-432 (LED)

Dear Mr. Cohen,

I write in reference to the privilege log prepared in response to subpoena served on yourself and Vista IP Law Group. The privilege log is inadequate for at least three reasons.

First, Fed. Rule of Civ. Proc. 45(d)(2) states that a privilege log must provide sufficient information regarding the documents withheld "to enable the demanding party to contest the claim." The generic entries on your log do not enable us to contest the claim of privilege. Rather, most of the "descriptions" for these entries are virtually devoid of content. Specifically, over 60% of the "descriptions" simply state the words "e-mail" or "e-mail chain," without any further elaboration. Other document descriptions are equally content-less. *See, e.g.*, entry no. 16 ("hardcopy e-mail"); 64 ("Word file (letter)"); 65 ("PDF file (letter)"). This technique is in violation of Rule 45(d)(2), as such bare-bones "descriptions" cannot enable Defendants to contest the claims of privilege. Defendants request that you produce these documents or supplement the privilege log to properly identify the subject matter of these documents.

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Second, every log entry refers to "work product" and "trial preparation material."<sup>1</sup> But, literally *none* of the entry descriptions indicate that the document was actually prepared in anticipation of litigation or trial. Absent a better description, there is no basis to assert work product protection over these documents.

Third, a number of entries assert attorney-client privilege over correspondence that does not involve any apparent "client." For instance, entry nos. 14, 30, 72, and 96 describe e-mail correspondence entirely between attorneys and/or their associated paralegals. Please produce these documents, or articulate why they are subject to the attorney-client privilege.

Please either produce the identified materials or provide an adequate privilege log by December 8, 2008. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

/s/

Emily O'Brien

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<sup>1</sup> We presume you are referring to the same work product protection in both of these categories. If there is a separate protection you are referring to as "trial preparation materials" please let us know.

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