

# Exhibit 1

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Pre-Trial Conference 12-29-2009

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IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF  
TEXAS, MARSHALL DIVISION

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PERFORMANCE PRICING, :  
INC., :  
Plaintiff, : Civil Action No.  
vs. : 2:07CV-432-RRR  
GOOGLE, INC., and AOL, :  
LLC, :  
Defendant. :  
-----x

Washington, D.C.

Tuesday, December 29, 2009

The above-entitled matter came on for Pretrial  
Conference, pursuant to Notice, at 2:01 p.m.

BEFORE: HONORABLE RANDALL R. RADER, Judge

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1 JUDGE RADER: The answer's yes.

2 MR. PERLSON: -- Your Honor, the Plaintiff is  
3 doing that, frankly, because they're interpreting it in  
4 a way that --

5 JUDGE RADER: Of course, of course. I  
6 understand that you'd like to shift that, but that's  
7 what's going on. Okay.

8 Are these -- what stage are we in with your  
9 motions, Mr. Dovel?

10 MR. DOVEL: The Defendant's oppositions are  
11 due now -- is it tomorrow, David?

12 MR. PERLSON: Tomorrow, yes.

13 MR. DOVEL: And if they're filed tomorrow,  
14 then our replies would be due on January 20th and the  
15 surreplies would be due on January 28th.

16 JUDGE RADER: Now, we're cutting that all  
17 back. It's all going to come in on the 19th. How  
18 would you gentlemen like to redo the deadlines so that  
19 I have everything on both sets of motions on the 19th?  
20 I'll let you propose your cutoff dates, but understand  
21 I want everything in on the 19th.

22 MR. PERLSON: Your Honor, this is Dave

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1 Perlson. One thing we could do is just -- you know, I  
2 don't know that there's really any need for a certify  
3 at this point. That certainly is one way to cut things  
4 short.

5 JUDGE RADER: That would get everything in on  
6 the 20th. So we'll just cut one day off of -- of your  
7 deadline and we'll have everything on the 19th, is that  
8 correct?

9 MR. DOVEL: Sounds fine, Your Honor.

10 JUDGE RADER: All right. January 19th, I'll  
11 have complete briefing on all of Plaintiff's motions,  
12 as well.

13 There is one other motion here, Mr. Dovel.  
14 Could you comment on your need to depose Ms. Lee?

15 MR. DOVEL: Yes, Your Honor. She is an  
16 employee of Google. We --

17 JUDGE RADER: She used to be the head of  
18 Patent Strategy, right? She's now the Deputy General  
19 Counsel?

20 MR. DOVEL: Sorry?

21 JUDGE RADER: She used to be the Patent  
22 Strategy head, she's now Deputy General Counsel, is

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1 that correct?

2 MR. DOVEL: That's my understanding, yes.

3 That's what I've been told.

4 JUDGE RADER: Okay. Why do you need to talk  
5 to her?

6 MR. DOVEL: We need to find out information  
7 about Google's patent procedures and policies and  
8 particularly their procedures that they use when they  
9 -- when they have pre-clearance activities when they  
10 introduce new product, whether they attempt to see if  
11 there's any patents that might infringe and also then  
12 what their approach is when they respond to the  
13 assertion of patents by a potential licensee.

14 We're trying to find out what happened when  
15 Mr. Lin made his -- put Google on notice. A motion  
16 that hasn't been filed yet that we're meeting and  
17 conferring on is that Google did provide a 30(b)(6)  
18 witness. That witness did not provide -- essentially  
19 provided no information and if that meet and confer  
20 process does not result in obtaining the information,  
21 then we'll have to bring a motion on that, as well,  
22 Your Honor.

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1 JUDGE RADER: All right. I'm going to hold  
2 that in abeyance until after I've dealt with my  
3 motions.

4 MR. DOVEL: Your Honor, I want to alert you to  
5 the other potential motions that may be filed. One is  
6 Plaintiff has a motion for leave to amend to add -- to  
7 -- to add the allegation of willful infringement, to  
8 plead it, and we're waiting to hear from Google on  
9 whether they're going to stipulate to that. If they  
10 don't, we'll be filing that motion.

11 Another potential motion -- well, let's see.  
12 Yeah. Then there's the 30(b)(6) witness, the  
13 information about Google's response to Mr. Lin and  
14 their patent procedures. If that's not resolved, that  
15 could result in a motion, as well, Your Honor.

16 JUDGE RADER: All right. Fine. Thank you for  
17 giving me that heads-up.

18 I've had a chance to discuss the matters with  
19 you pretty extensively. What I anticipate is that I  
20 will look at my motions on the 19th and you'll hear  
21 from me probably the week after that as to whether I  
22 need to discuss them further with you.

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1           There's a chance we could have another one of  
2 these sessions to examine the implications of the  
3 motions and at that time, I would also set a trial  
4 which would occur in April, if it's necessary. It  
5 would occur sometime between April 12th and April 30th.  
6 So you need to keep that available, if necessary.

7           MR. DOVEL: Yes, Your Honor.

8           JUDGE RADER: I think I've finished my  
9 business for today.

10           Do you have anything you'd like to ask,  
11 gentlemen, or Ms. O'Brien, as well?

12           MR. DOVEL: Nothing from the Plaintiff, Your  
13 Honor.

14           MR. PERLSON: David Perlson. I don't have  
15 anything. The one note I have, I know that there is  
16 conflict, that we have a pre-trial conference at the  
17 end of April, but we could address that later, if  
18 there's a conflict later on.

19           JUDGE RADER: That's correct. We'd probably  
20 set our pre-trial somewhere in March if we're going to  
21 trial in April.

22           Okay. I will probably not talk to you again