

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

PERFORMANCE PRICING, INC.,

Plaintiff,

v.

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

Defendants.

Case No. 2:07-cv-432 (LED)

**JURY TRIAL DEMANDED**

**Agreed Docket Control Order**

	<b>ACTION</b>	<b>RULE</b>	<b>DATE DUE</b>
<b>1</b>	Disclosure of Asserted Claims and Infringement Contentions due. Thereafter, it is necessary to obtain leave of Court to add and/or amend infringement contentions, pursuant to Patent Rule 3-6. Plaintiff shall join additional parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties. Plaintiff shall add new patents and/or claims for patents-in-suit. It is not necessary to file a motion to add additional patents or claims prior to this date. Thereafter, it is necessary to obtain leave of Court to add patents or claims.	P.R. 3-1 and P.R. 3-2	5/14/2008
<b>2</b>	Parties submit the name of a mediator.		5/19/2008
<b>3</b>	Invalidity Contentions due. Thereafter, it is necessary to obtain leave of Court to add and/or amend invalidity contentions, pursuant to Patent Rule 3-6. Defendant shall join additional parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties.	P.R. 3-3 and 3-4	7/14/08
<b>4</b>	Exchange Proposed Terms and Claim Elements for Construction.	P.R. 4-1	10/30/2008
<b>5</b>	Exchange of Preliminary Claim Constructions and	P.R. 4-2	12/5/2008

	Extrinsic Evidence. Privilege Logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).		
<b>6</b>	Amended Pleadings (pre-claim construction) due from all parties. It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, if the amendment would affect infringement contentions or invalidity contentions, a motion must be made pursuant to Patent Rule 3-7 irrespective of whether the amendment is made prior to this deadline.		1/16/2009
<b>7</b>	Defendant shall assert any counterclaims. After this deadline, leave of Court must be obtained to assert any counterclaims. Add any inequitable conduct allegations to pleadings. It is not necessary to file a motion for leave to add inequitable conduct allegations to pleadings prior to this date. Thereafter, it is necessary to obtain leave of Court to add inequitable conduct allegations to pleadings.		1/16/2009
<b>8</b>	Filing of Joint Claim Construction and Pre-hearing Statement.	P.R. 4-3	1/30/2009
<b>9</b>	Proposed Technical Advisors due. Parties to provide name, address, phone number, and curriculum vitae for up to three agreed technical advisors and information regarding the nominees' availability for Markman hearing or a statement that they could not reach an agreement as to any potential technical advisor. If the parties cannot agree on a technical advisor, they shall not submit any proposed technical advisors to the Court.		1/30/2009
<b>10</b>	Respond to Amended Pleadings.		1/30/2009
<b>11</b>	Discovery Deadline - Claim Construction Issues. This date is the last day to complete discovery on claim construction issues.		2/26/2009
<b>12</b>	Tutorials due. Deadline for parties, if they desire, to provide Court with tutorials concerning technology involved in patent. If a technical advisor has been appointed, each party that provides a tutorial shall provide a copy to the advisor.		3/12/2009
<b>13</b>	The party claiming patent infringement shall serve and file an opening brief and any evidence supporting its claim construction. The filing party is to provide the Court with 2 binders containing their	P.R. 4-5(a)	4/15/2009

	<p>Markman brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their Markman brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor. Briefing shall comply with Local Rules CV-7 and 56 and Patent Rule 4-5(e). Motions to extend page limits will only be granted in exceptional circumstances.</p>		
<b>14</b>	<p>Motion for Summary Judgment on Indefiniteness due. The moving party is to provide the Court with 2 binders containing their brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor. Briefing shall comply with Local Rules CV-7 and 56 and Patent Rule 4-5(e). Motions to extend page limits will only be granted in exceptional circumstances.</p>		4/30/2009
<b>15</b>	<p>Responsive brief and supporting evidence due to party claiming patent infringement. The filing party is to provide the Court with 2 binders containing their Markman brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their Markman brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.</p>		5/15/2009
<b>16</b>	<p>Response to Motion for Summary Judgment on Indefiniteness due. The filing party is to provide the Court with 2 binders containing their brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor. Briefing shall comply with Local Rules CV-7 and 56 and Patent Rule 4-5(e). Motions to extend page limits will only be granted in exceptional circumstances.</p>		5/21/2009
<b>17</b>	<p>Reply brief and supporting evidence due re response to claim construction. The filing party is to provide the Court with 2 binders containing their reply brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to</p>	P.R. 4-5(c)	6/6/2009

	provide their brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.		
18	Parties to file a notice with the Court stating the estimated amount of time requested for the Markman Hearing. The Court will notify the parties if it is unable to accommodate this request.		6/8/2009
19	P.R. 4-5(d) Chart due. Parties shall jointly submit a claim construction chart on computer disk in WordPerfect format or in such other format as the Court may direct in accordance with P.R. 4-5(d).	P.R. 4-5(d)	6/11/2009
20	Reply to Motion for Summary Judgment of Indefiniteness due. The filing party is to provide the Court with 2 binders containing their brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor. Briefing shall comply with Local Rules CV-7 and 56 and Patent Rule 4-5(e). Motions to extend page limits will only be granted in exceptional circumstances.		6/11/2009
21	<b>Markman Hearing at 9:00 a.m. at the United States District Court, 211 West Ferguson, 2nd Floor, Courtroom of Judge John D. Love, Tyler, Texas.</b>	<b>P.R. 4-6</b>	<b>6/18/2009</b>
22	Furnishing documents and privilege logs pertaining to willful infringement.	P.R.3-7	8/12/2009
23	Parties with burden of proof designate expert witnesses (non-construction issues). Expert witness reports due. Refer to Local Rules for required information.		8/17/2009
24	Parties designate responsive expert witnesses (non-construction issues). Expert witness reports due. Refer to Local Rules for required information.		9/18/2009
25	Discovery Deadline. This date is the last day to complete discovery.		10/16/2009
26	Amend Pleadings (after Markman Hearing). It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, except as provided in Patent Rule 3-6, if the amendment would effect preliminary or final infringement contentions or		10/23/2009

	preliminary or final invalidity contentions, a motion must be made pursuant to Patent Rule 3-7 irrespective of whether the amendment is made prior to this deadline.		
<b>27</b>	Parties to Identify Trial Witnesses		12/4/09
<b>28</b>	Last Day for Dispositive Motions from all parties and any other motions that may require a hearing (including Daubert motions); Motion for Summary Judgment shall comply with Local Rule CV56. Answer to Amended Pleadings (after Markman Hearing) due.		11/12/2009
<b>29</b>	Last Day for Response to Dispositive Motions (including Daubert motions). Responses to dispositive motions filed prior to the dispositive motion deadline, including Daubert Motions, shall be due in accordance with Local Rule CV-7(e).		12/10/2009
<b>30</b>	Parties to Identify Rebuttal Trial Witnesses.		1/8/10
<b>31</b>	Joint Pretrial Order, Joint Proposed Jury Instructions with citation to authority, and Form of the Verdict for jury trials. Proposed Findings of Fact and Conclusions of Law with citation to authority for bench trials. Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings. If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Shea Sloan, at shea_sloan@txed.uscourts.gov.		1/12/2010
<b>32</b>	Pretrial Disclosures due. Video and Stenographic Deposition Designations due. Each party who proposes to offer deposition testimony shall file a disclosure identifying the line and page numbers to be offered. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.		1/22/2010
<b>33</b>	Rebuttal Designations and Objections to Deposition Testimony due. Cross examination line and page numbers to be included. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.		2/12/2010
<b>34</b>	Motions in Limine due.		2/25/2010
<b>35</b>	Objections to Rebuttal Deposition Testimony due.		2/26/2010

<b>36</b>	The parties are directed to confer and advise the Court on or before 3:00 o'clock p.m. the day before the pre-trial conference which paragraphs are agreed to and those that need to be addressed at the pre-trial conference.		3/11/2010
<b>37</b>	Pretrial Objections due.		3/15/2010
<b>38</b>	Parties to file estimates of the amount of time they request at jury selection and trial for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.		3/16/2010
<b>39</b>	PRETRIAL CONFERENCE at the United States District Court, 211 W. Ferguson, Tyler, Texas. All pending motions will be heard. Lead trial counsel must attend the pretrial conference.		3/18/2010
<b>40</b>	9:00 a.m. JURY SELECTION at the United States District Court, 100 E. Houston, Room 125, Marshall, Texas 75670.		4/6/2010
<b>41</b>	9:00 a.m. JURY TRIAL as reached at the United States District Court, 100 E. Houston, Room 125, Marshall, Texas 75670.		<b>4/12/2010</b>