

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

PERFORMANCE PRICING, INC., a Texas
corporation;

Plaintiff,

vs.

GOOGLE INC., a Delaware corporation;
AOL LLC, a Delaware limited liability
company; MICROSOFT CORPORATION,
a Washington corporation; YAHOO! INC.,
a Delaware corporation; IAC SEARCH &
MEDIA, INC., a Delaware corporation;
A9.COM, INC., a Delaware corporation;

Defendants.

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

Jury Trial Demanded

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Performance Pricing, Inc. (“Performance Pricing”) sues Google Inc., AOL LLC, Microsoft Corporation, Yahoo! Inc., IAC Search & Media, Inc., and A9.com, Inc., (collectively “Defendants”) and, on information and belief, alleges as follows:

Introduction

1. Plaintiff Performance Pricing is the exclusive licensee with all substantial rights in the invention described and claimed in United States Patent No. 6,978,253 entitled “Systems and Methods for Transacting Business Over a Global Communications Network such as the Internet” (the “253 patent”). Defendants have used, and continue to use, Plaintiff Performance Pricing’s patented technology in methods and systems that they make, use, sell, and offer to sell, without Plaintiff’s permission. Plaintiff seeks damages for patent infringement and

an injunction preventing Defendants from making, using, selling, or offering to sell the technology claimed by the Patent without Plaintiff's permission.

Jurisdiction and Venue

2. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, *et seq.* The Court has original jurisdiction over this patent infringement action under 28 U.S.C. § 1338(a).

3. Within this judicial district each of the Defendants has committed acts and continues to commit acts that give rise to this action, including using, selling, and offering to sell products, methods, and systems that infringe the claims of the '253 patent. Moreover, each of the Defendants regularly does substantial business in this judicial district. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and § 1400.

Plaintiff Performance Pricing

4. Performance Pricing, Inc. is a Texas corporation having a principal place of business in Austin, Texas.

Defendants

5. Upon information and belief, Google Inc. is a Delaware corporation having its principal place of business in Mountain View, California ("Google"). Google is registered to do business as a foreign for-profit corporation in the state of Texas. Google's foreign corporation registration lists Corporation Service Company DBA CSC as its registered agent for service of process.

6. Upon information and belief, AOL, LLC is a Delaware limited liability company having its principal place of business in Dulles, Virginia (“AOL”). AOL is registered to do business as a foreign limited liability company in the state of Texas. AOL’s foreign corporation registration lists Corporation Service Company DBA CSC as its registered agent for service of process.

7. Upon information and belief, Microsoft Corporation is a Washington corporation having its principal place of business in Redmond, Washington (“Microsoft”). Microsoft is registered to do business as a foreign for-profit corporation in the state of Texas. Microsoft’s foreign corporation registration lists Corporation Service Company as its registered agent for service of process.

8. Upon information and belief, Yahoo! Inc. is a Delaware corporation having its principal place of business in Sunnyvale, California (“Yahoo”). Yahoo is registered to do business as a foreign for-profit corporation in the state of Texas. Yahoo’s foreign corporation registration lists CT Corporation System as its registered agent for service of process.

9. Upon information and belief, IAC Search & Media, Inc., is a Delaware corporation having its principal place of business in Oakland, California (“IAC”). IAC is registered to do business as a foreign for-profit corporation in the state of Texas. IAC’s foreign corporation registration lists National Registered Agents, Inc. as its registered agent for service of process.

10. Upon information and belief, A9.com, Inc., is a Delaware corporation having its principal place of business in Palo Alto, California (“A9.com”).

First Claim for Patent Infringement
(infringement of the '253 patent)

11. Plaintiff incorporates by reference each of the allegations in paragraphs 1 through 10 above and further alleges as follows:

12. The United States Patent and Trademark Office issued the '253 patent on December 20, 2005. Attached as Exhibit A is what is believed to be a copy of the text of the '253 patent. Plaintiff Performance Pricing is the exclusive licensee with substantially all rights to the '253 patent, including the rights to pursue and collect damages for any infringement of the patent and to obtain injunctive relief to stop infringement.

13. Without a license or permission from Plaintiff, Defendants Google, AOL, Microsoft, Yahoo, IAC, and A9.com have infringed the '253 patent and, unless enjoined, will continue to do so, by making, using, providing, selling, and offering for sale products, methods, and systems that infringe the claims of the '253 patent including, without limitation, the products, methods, and systems of Google's AdWords, AOL's Search Marketplace, Microsoft's adCenter, Yahoo's Search Marketing, IAC's Ask Sponsored Listings, and A9.com's Clickriver Ads.

14. Plaintiff has been damaged by Defendants' infringement of the '253 patent and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined from continuing to infringe the '253 patent.

15. Plaintiff is entitled to recover damages from the Defendants to compensate it for the infringement.

16. Plaintiff demands trial by jury of all issues relating to this claim.

WHEREFORE, Plaintiff prays for judgment as follows:

- A. A decree preliminarily and permanently enjoining Defendants, their officers, directors, employees, agents, and all persons in active concert with them, from infringing, and contributing to or inducing others to infringe, the '253 Patent;
- B. Compensatory damages for Defendants' infringement of the '253 Patent;
- C. Costs of suit and attorneys' fees on the basis that this patent infringement case is exceptional;
- D. Pre-judgment interest; and
- E. For such other relief as justice requires.

Dated: October 16, 2007

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF
PERFORMANCE PRICING, INC.

CERTIFICATE OF SERVICE

I hereby certify that the following counsel of record who are deemed to have consented to electronic service are being served this 16th day of October, 2007, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ N. Claire Abernathy