

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

FILED-CLERK
U.S. DISTRICT COURT
2007 SEP 27 PM 3:33
EASTERN-MARSHALL

BY _____

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;

Defendants.

CASE NO. **2-07CV-432**

Jury Trial Demanded

LED

COMPLAINT FOR PATENT INFRINGEMENT

Performance Pricing, Inc (“Performance Pricing”) sues Google, Inc., AOL LLC, Microsoft Corporation, and Yahoo! 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.

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

9. Plaintiff incorporates by reference each of the allegations in paragraphs 1 through 8 above and further alleges as follows:

10. 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.

11 Without a license or permission from Plaintiff, Defendants Google, AOL, Microsoft, and Yahoo 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, and Yahoo's Search Marketing

12 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.

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


14 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: September 27, 2007

Respectfully submitted,

By: 
S. Calvin Capshaw
State Bar No. 03783900
Email: ccapshaw@mailbmc.com
Elizabeth L. DeRieux
State Bar No. 05770585
Email: ederieux@mailbmc.com
Andrew W. Spangler
State Bar No. 24041960
Email: aspangler@mailbmc.com
Brown McCarroll, L.L.P.
1127 Judson Road, Suite 220
Longview, TX 75601
Telephone: (903) 236-9800
Facsimile: (903) 236-8787

Robert M. Parker
State Bar No. 15498000
Email: rmparker@pbatyler.com
Robert Christopher Bunt
State Bar No. 00787165
Email: rbunt@pbatyler.com
Charles Ainsworth
State Bar No. 00783521
Email: charley@pbatyler.com
Parker, Bunt & Ainsworth, P.C.
100 East Ferguson, Ste 1114
Tyler, TX 75702
Telephone: (903) 531-3535
Facsimile: (903) 533-9687

Gregory S. Dovel
CA State Bar No. 135387
E-mail: greg@dovellaw.com
Sean Luner
CA State Bar No. 165443
E-mail: sean@dovellaw.com
Dovel & Luner, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, CA 90401
Telephone: (310) 656-7066
Facsimile: (310) 657-7069

ATTORNEYS FOR PLAINTIFF
PERFORMANCE PRICING, INC.