

EXHIBIT J



IN RE GOOGLE INC., ADOBE SYSTEMS INC., AMAZON.COM, INC., APPLE INC., CDW LLC, EBAY INC., JP MORGAN CHASE & CO., NEW FRONTIER MEDIA, INC., ORACLE AMERICA, INC., (FORMERLY KNOWN AS SUN MICROSYSTEMS INC.), PLAYBOY ENTERPRISES INTERNATIONAL, INC., STAPLES, INC., THE GO DADDY GROUP, INC., YAHOO! INC., AND YOUTUBE, LLC, Petitioners.

Miscellaneous Docket No. 968

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

412 Fed. Appx. 295; 2011 U.S. App. LEXIS 4381

March 4, 2011, Decided

March 4, 2011, Filed

NOTICE: THIS DECISION WAS ISSUED AS UNPUBLISHED OR NONPRECEDENTIAL AND MAY NOT BE CITED AS PRECEDENT. PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: [**1]

On Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas in case nos. 09-CV-0446, Judge Leonard Davis.

Eolas Techs., Inc. v. Adobe Sys., Inc., 2010 U.S. Dist. LEXIS 104125 (E.D. Tex., Sept. 28, 2010)

COUNSEL: For Adobe Systems, Inc., Petitioner: HEALEY, DAVID J., PRINCIPAL ATTORNEY, Fish & Richardson, P.C., Houston, TX; WOLFF, JASON W., OF COUNSEL ATTORNEY, Fish & Richardson, P.C., San Diego, CA.

For Amazon.com, Inc., eBay Inc., Yahoo! Inc., Petitioners: LUMISH, DOUGLAS E., PRINCIPAL ATTORNEY, REINES, EDWARD R., OF COUNSEL ATTORNEY, Weil, Gotshal & Manges LLP, Redwood Shores, CA.

For Apple Inc., Petitioner: CEDEROTH, RICHARD A., OF COUNSEL ATTORNEY, PRITIKIN, DAVID T., PRINCIPAL ATTORNEY, Sidley Austin LLP, Chicago, IL; CHANDLER, THEODORE W., OF COUNSEL ATTORNEY, Sidley Austin LLP, Los Angeles, CA; DONAHEY, TEAGUE I., OF COUNSEL ATTORNEY, Sidley Austin LLP, San Francisco, CA.

For CDW LLC, Petitioner: DUSTON, THOMAS L., PRINCIPAL ATTORNEY, Marshall, Gerstein & Borun LLP, Chicago, IL.

For Eolas Technologies Incorporated, Respondent: CAWLEY, DOUGLAS A., OF COUNSEL ATTORNEY, MCKOOL, JR., MIKE, PRINCIPAL ATTORNEY, McKool Smith, P.C., Dallas, TX; BURGESS, KEVIN LEE, THOLLANDER, JOEL L., OF COUNSEL ATTORNEYS, McKool Smith, P.C., Austin, TX.

For Google Inc., [**2] Petitioner: CLEMENT, PAUL D., PRINCIPAL ATTORNEY, JOSEFFER, DARYL L., OF COUNSEL ATTORNEY, King & Spalding LLP, Washington, DC; WEINGAERTNER, SCOTT T., OF COUNSEL ATTORNEY, King & Spalding LLP, New York, NY; CONRAD, ADAM M., OF COUNSEL

ATTORNEY, King & Spalding LLP, Charlotte, NC.

For JP Morgan Chase & Co., Petitioner: SHAHIDA, STEPHEN K., PRINCIPAL ATTORNEY, McDermott, Will & Emery, Washington, DC.

For Microsoft Corporation, Amicus Curiae: BASH, JOHN F., OF COUNSEL ATTORNEY, MCGILL, MATTHEW D., PRINCIPAL ATTORNEY, Gibson, Dunn & Crutcher LLP, Washington, DC.

For New Frontier Media, Inc., Petitioner: SIMONS, MICHAEL, PRINCIPAL ATTORNEY, Akin, Gump, Strauss, Hauer, Austin, TX.

For Office Depot, Inc., Amicus Curiae: JUREK, KENNETH J., PRINCIPAL ATTORNEY, WALLMAN, SUZANNE M., OF COUNSEL ATTORNEY, McDermott, Will & Emery, Chicago, IL; WARREN, BUREDEN J., OF COUNSEL ATTORNEY, McDermott, Will & Emery, Washington, DC.

For Oracle America, Inc. (f/k/a Sun Microsystems Inc.), Petitioner: RILEY, KATHRYN B., PRINCIPAL ATTORNEY, DLA Piper US LLP, San Diego, CA.

For Perot Systems Corp., Amicus Curiae: FULGHUM, ROGER J., OF COUNSEL ATTORNEY, PARTRIDGE, SCOTT F., PRINCIPAL ATTORNEY, Baker Botts, LLP, Houston, [**3] TX.

For Playboy Enterprises International, Inc., Petitioner: FEDOCK, JOHN A., MCLEAN, GENTRY C., OF COUNSEL ATTORNEYS, WEAVER, DAVID B., PRINCIPAL ATTORNEY, Vinson & Elkins LLP, Austin, TX.

For Staples, Inc., Petitioner: STEINBERG, DONALD R., PRINCIPAL ATTORNEY, Wilmer Cutler Pickering Hale, Boston, MA.

For The Go Daddy Group, Inc., Petitioner: BROWN, THOMAS A., OF COUNSEL ATTORNEY, MUKHERJI, PROSHANTO, PRINCIPAL ATTORNEY, Fish & Richardson, P.C., Boston, MA.

For YouTube, LLC, Petitioner: CLEMENT, PAUL D., PRINCIPAL ATTORNEY, King & Spalding LLP, Washington, DC.

For YouTube, LLC, Petitioner: WEINGAERTNER, SCOTT T., OF COUNSEL ATTORNEY, King &

Spalding LLP, New York, NY; JOSEFFER, DARYL L., OF COUNSEL ATTORNEY, King & Spalding LLP, Washington, DC; CONRAD, ADAM M., OF COUNSEL ATTORNEY, King & Spalding LLP, Charlotte, NC.

JUDGES: Before PROST, MAYER, and MOORE, Circuit Judges.

OPINION BY: MOORE

OPINION

[*295] **ON PETITION**

MOORE, *Circuit Judge*.

ORDER

This is a petition for a writ of mandamus from an order denying a motion to transfer to the Northern District of California pursuant to 28 U.S.C. § 1404(a) or, in the alternative, to sever and transfer plaintiffs claims against certain defendants. The petition arises out of a patent infringement [**4] suit against twenty-two defendants¹ brought by Eolas Technologies, Inc. (Eolas), the exclusive licensee of the patents-in-suit.

1 Among the petitioners, Google, Adobe, Apple, eBay Inc., Oracle, Yahoo! Inc., YouTube, LLC, are headquartered in the Northern District of California, Amazon.com, Inc. is headquartered in Seattle, Washington, CDW LLC and Playboy Enterprises International, Inc. are headquartered in Illinois, Go Daddy Group is headquartered in Arizona, New Frontier Media, Inc. is headquartered in Colorado, Staples, Inc. is headquartered in Massachusetts, and JPMorgan Case & Co. is headquartered in New York. Among the other defendants, Texas Instruments Inc. is headquartered in Dallas, Texas, Perot Systems Corp., Frito-Lay, Inc., J.C. Penney Company, Inc., and Rent-A-Center, Inc. are headquartered in the Eastern District of Texas, Citigroup Inc. is headquartered in New York, Argosy Publishing Inc. is headquartered in Massachusetts, and Office Depot, Inc. is headquartered in Florida. Originally, Blockbuster Inc. was also joined but has now been severed.

Eolas filed this suit in its home district, the Eastern

District of Texas. Of the defendants, four reside in the forum, seven reside [**5] in the Northern District of California, and the remaining reside in other districts throughout the country. Several [*296] defendants moved to transfer the case to the Northern District of California. Alternatively, the defendants argued that, if any defendant served as a barrier to transfer, then the district court should sever the claims against that defendant and transfer the remainder of the case to the Northern District of California. The district court denied those motions. The district court explained that the Eastern District of Texas has a local interest in adjudicating this matter because Eolas maintains offices and is incorporated in the forum and because four defendants are also headquartered there. The court also explained that for those parties "it will be substantially more convenient for the case to continue in the Eastern District of Texas." *Eolas Techs. Inc. v. Adobe Systems, Inc.*, 6:09-CV-00446, 2010 U.S. Dist. LEXIS 104125, *19 (E.D. Texas. Sept. 28, 2010) (hereinafter *Transfer Order*). The court also denied the petitioners' request to sever and transfer, explaining that the products, facts, and issues of law were significantly related and overlapping and that severance and transfer would not [**6] preserve judicial economy.

"[D]eference" the Supreme Court has stated "is the hallmark of abuse of discretion review." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 143, 118 S. Ct. 512, 139 L. Ed. 2d 508 (1975). Our reluctance to interfere is not a formality. Section 1404(a) of title 28 of the United States Code provides that a district court "may transfer" a civil action to another court "[f]or the convenience of parties and witnesses, in the interest of justice." (emphasis added). Thus, the transfer statute itself commits the balancing determination to the sound discretion of the trial court based on its familiarity with the case and issues involved. See *In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010) (citing *A. Olinick & Sons v. Dempster Bros., Inc.*, 365 F.2d 439, 444 (2d Cir. 1966)). Our authority here on mandamus review is narrow, confined solely to determining whether the trial court's denial of transfer

produced a patently erroneous result. See *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 310 (5th Cir. 2008) (en banc).

The district court did not abuse its discretion. With regard to the motion to transfer the entire action, the district court first acknowledged that the Northern District of California would [**7] be more convenient for the seven defendants that reside there. *Transfer Order*, 2010 U.S. Dist. LEXIS 104125 at *19. But it similarly determined that four of the defendants were headquartered in the Eastern District of Texas and that for these parties "it will be substantially more convenient for the case to continue in the Eastern District of Texas." *Id.* "Where [defendants] are in different states there is no choice of forum that will avoid imposing inconvenience[.]" *In re Nat'l Presto Indus., Inc.*, 347 F.3d 662, 665 (7th Cir. 2003). We cannot hold that, on these facts, the district court abused its discretion in refusing to transfer the entire action.

We also cannot say that the trial court abused its discretion in refusing to sever and transfer the petitioners' claims to the Northern District of California. Courts have consistently held that judicial economy plays a paramount role in trying to maintain an orderly, effective, administration of justice and having one trial court decide all of these claims clearly furthers that objective. See *Cont'l Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26, 80 S. Ct. 1470, 4 L. Ed. 2d 1540 (1960); see also *Vistaprint*, 628 F.3d at 1346. Further, the district court noted that, in this case, "adjudicating infringement [**8] . . . will involve substantially overlapping questions of law or fact." *Transfer Order*, 2010 U.S. Dist. LEXIS 104125 at *15. This determination does not amount to an abuse of discretion.

Accordingly,

[*297] IT IS ORDERED THAT:

The petition is denied.