

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EOLAS TECHNOLOGIES, INC. AND THE
REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Plaintiffs,

v.

ADOBE SYSTEMS INC., ET AL.,

Defendants.

Civil Action No. 6:09-CV-446 LED

JURY TRIAL DEMANDED

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY
JUDGMENT OF INVALIDITY UNDER SECTION 102(B)**

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT OF INVALIDITY
UNDER SECTION 102(B)

Eolas admits it alleged that Adobe's PDF authoring tools, including Acrobat, infringed the patents-in-suit. Dkt. 994 at 2, ¶ 2-3.¹ Eolas admits that Acrobat technology was on sale and sold more than one year prior to October 7, 1993, the critical date for the patents-in-suit. Dkt. 994 at 2, ¶ 1. And Eolas does not dispute that interactive features alleged to infringe in so-called "modern versions" of Acrobat include the same features and use that existed more than one year before the critical date. *Id.* Accordingly, the patents-in-suit are invalid under the on-sale bar.

I. ARGUMENT

Eolas argues that the Defendants did not prove invalidity by clear and convincing evidence because they did not provide claim-by-claim analyses that show the 1993 version of Acrobat contained each limitation of any claim of the patents-in-suit.² As discussed in Defendants' opening brief, this case is not the typical case where the patentee placed some device on sale prior to the critical date. Instead, this is a case in which the accused product was offered for sale prior to the critical date of the patented invention. Eolas's P. R. infringement contentions satisfy Defendants' burden here. *See Vanmoor v. Wal-Mart Stores, Inc.*, 201 F.3d 1363, 1366 (Fed. Cir. 2000) ("[T]hat burden was satisfied by [Patentee's] allegation..."). There is no limiting description of which versions of Acrobat are alleged to infringe. The coincidental

¹ Cites are to the numbered paragraphs in Eolas's "Response to Statement of Undisputed Material Fact," which Eolas lined up with the paragraph count in Adobe's Statement of Facts. Eolas only completely denies that its corporate representative and inventor testified that he understood that Acrobat infringed the patent. For completeness, Adobe denies Eolas's statement of material facts, which are mostly irrelevant and addressed elsewhere. Adobe notes that Eolas's statement no. 3 is equivocal regarding whether a browser is required, or a content "may" ever be displayed, though statement nos. 4-5 depend on a "web browser" displaying PDF content. This intended use "environment" Eolas suggests (*see* Dkt. 995 footnotes 5 and 6) was already known and inherently part of the Internet before October 1993. *See, e.g.,* Wolff Decl., Exs. B and C.

² Eolas contends that Defendants' expert offered no opinion on invalidity in view of Acrobat. Dkt. 994 at 3, ¶ 6. This is incorrect. Dr. Phillips opined that Eolas accused the prior art of infringing and opined that the patents were also invalid as obvious in view of 1993 Acrobat and the browser community's desire and suggestions to combine it with a web browser. *See* Phillips Report (Wolff Decl. Ex. D at ¶¶586-593) and Wolff Decl. Ex. E (www-talk messages from ¶¶590-591); *see also* Wolff Decl. Exs. B and C (Bina Exs. 4 and 7).

reference to Acrobat 5 in Eolas's charts is not any analysis by Eolas but random quotes from Adobe's documents. *See, e.g.*, Dkt. 869-03 at 1 ("including but not limited to") and 4 ("and any other tools used to create pdf or similar content").³

Furthermore, that Eolas's allegations against Acrobat *standing alone* were only for *indirect* infringement does not alter the analysis, and Eolas cites no case making such a distinction. Eolas alleged contributory infringement specifically, and thus Eolas cannot escape its allegation that the PDF authoring tools lacked a substantial non-infringing use before the critical date.⁴ Furthermore, Eolas does not dispute that the "default and expected use" of Adobe's PDF authoring tools has been to "'create PDF or similar content' that can then be viewed or read by other computer users since 1992." Dkt. 869 at 3 (Adobe fact); Dkt. 994 at 2, ¶ 3 (no denial by Eolas). Thus the only element disputed by Eolas is whether PDF files could be embedded in a "web browser." It was already known and desirable to embed interactive PDF files in a browser, which is just one technique for sharing files between computers. *See* Dkt. 869 at 6 (Figs. 1 and 2), and Wolff Decl. Exs. B, C, D, and E.

Lastly, Eolas is bound by its infringement allegations against Acrobat and cites no case to support its position that a belated withdrawal of its authoring tool contentions changes the analysis.⁵ Eolas did not formally withdraw its contentions; it left the issue open to maximize its leverage against Adobe, later noticing depositions and still seeking a royalty on sales.

II. CONCLUSION

Defendants submit that the patents-in-suit are invalid under 35 USC § 102(b).

³ Eolas's infringement charts contradict its statement of fact no. 1.

⁴ *See* Dkts. 869-02 and 869-03, first sentence in the "Evidence" column on the first page.

⁵ Eolas cites Dkt. 375 at 3 for its assertion that it withdrew its authoring tool contentions, but Eolas never followed through.

Dated: October 11, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on October 11, 2011 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Jason W. Wolff
