

**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

**DECLARATION OF JASON W. WOLFF IN SUPPORT OF REPLY IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF INVALIDITY UNDER
SECTION 102(B)**

I, Jason W. Wolff, declare and state as follows:

1. I am a principal at Fish & Richardson P.C., counsel of record in this action for Defendant Adobe Systems Incorporated (“Adobe”). I am a member of the Bar of the State of California and of this Court. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2. Eolas proposes 6 statements of undisputed fact in its opposition to Defendants’ Motion for Summary Judgment of Invalidity Under Section 102(b). These “facts” are largely irrelevant make-work and generally disputed.

3. Eolas statement no. 1 reads:

“Eolas’ infringement contentions never mention, cite or otherwise refer to any version of Adobe Acrobat released prior to version 5 (which was released in 2001). See Ex. A at 85 (Acrobat version 5); Ex. B at 142 (same); Ex. C (Acrobat 5.0 released April 2001). Eolas’ contentions do not provide a claim-by-claim and element-by-element mapping of the 1993 Acrobat to the claims of the patents-in-suit.”

4. Eolas statement no. 1 is denied. Mukerji Exhibits 2 and 3 (Dkts. 869-02 and 869-03) to Adobe’s opening motion provides Eolas’s infringement contentions. The excerpts cited by Eolas do not concern all asserted claims, nor do they reflect language by Eolas limiting the accused versions in anyway. In fact, Eolas’s contentions were expansive and even noted that they were “not limited by the browser in use,” *see, e.g.*, Dkt. Nos. 869-03 at 1 and 4 and 869-02 at 1 (respectively below):

Claim Chart For Adobe Showing Indirect Infringement Of The '985 Patent Through pdf authoring tools and Direct And/Or Indirect Infringement Via Its PDF Viewers

Claim	Claim Language	Evidence
1pre	A method for running an application program	Adobe indirectly, by induced and/or contributory infringement, infringes all elements of this claim, set forth below, through its pdf authoring tools, including but not limited to: <ul style="list-style-type: none"> • Acrobat Standard

...

		and any other tools used to create pdf or similar content. For example, users of Adobe pdf authoring tools, the pdf authoring tools themselves and/or the servers hosting the pdf authoring tools (and/or the combination thereof) run an application program in a distributed hypermedia network environment, wherein the network environment comprises at least one client workstation and one network server coupled to the network environment. In addition, Adobe provides the infrastructure (e.g. the authoring tools/servers), in addition to instructions to users, and causes them to use Adobe pdf authoring tools in an infringing manner in their default and expected uses.
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* Allegation not limited to the browser in use

5. Eolas statement no. 2 reads:

“Eolas’ patents-in-suit are entitled to a priority date of October 1993—based upon their October 1994 filing. Ex. D (U.S. Patent No. 5,838,906 (filed Oct. 17, 1994)); Ex. E (U.S. Patent No. 7,599,985 (filed Aug. 9, 2003) (continuation of App. No. 09/075,359, which is a continuation of App. No. 08/324,443, filed on Oct. 17, 1994, now U.S. Patent No. 5,838,906)).”

6. The priority date is irrelevant since the motion is under 102(b) and it is undisputed the Acrobat technology was offered for sale in June 1993, more than a year before the October 17, 1994 filing date. Defendants deny statement no. 2, particularly that the priority of the patents-in-suit is “October 1993.” The patents claim priority to filings on October 17, 1994 and Eolas offers no evidence that an earlier date is appropriate or even an argument that it is relevant.

7. Eolas statement no. 3 reads:

“Each claim in both of the patents-in-suit relates to embedding content in a browser controlled window and/or formatting a communication so that a browser may display such embedded content in a browser controlled window if it is received by the browser. For example, claim 1 of the ’906 patent includes the limitation: ‘display said object and enable interactive processing of said object within a display area created at said first location . . . in said first browser-controlled window.’ Ex. D at col.17 ll.22–27.”

8. The claim language is largely irrelevant because Defendants’ motion is based on Eolas’s infringement allegations. Defendants agree that claim 1 of the ’906 patent includes the quoted limitation, but dispute that the claim language can be summarized in the equivocal fashion of Eolas statement no. 3, which is a purely legal issue concerning claim construction. It is noted that in Dkt. 995 at 2-3, Eolas argues that the claim limitations are merely “environment” limitations and not required at all. *See, e.g.*, Dkt. 995 at footnotes 5 and 6:

⁵ For the purposes of this response, “environment” refers to the “computer network environment” described in claim 1 of the ’906 Patent, the “distributed hypermedia environment” described in claim 6 of the ’906 Patent and claims 20–22 of the ’985 Patent, and the “distributed hypermedia network environment” described in claims 1–3, 8, 10–11, and 36–43 of the ’985 Patent.

⁶ “Server-side” claims include independent claims 20 and 40 of the ’985 Patent and their dependent claims. They are labeled server-side because they are directly infringed by entities (such as the defendants) that operate web servers. “Browser-side” claims include independent claims 1 and 6 of the ’906 Patent and independent claims 1 and 36 of the ’985 Patent. They are labeled browser-side because they are directly infringed by entities that make, use, or distribute browsers.

9. Eolas statement no. 4 reads:

“Defendants’ Motion relies on the declaration of Robert Wulff. Motion at 2. As Mr. Wulff testified in his deposition, the 1993 Acrobat could not display a PDF within a browser controlled window—instead it used the prior art technique of a “helper application” to display PDF documents in a window external to, and not controlled by, the browser. Ex F at 20:18–21:1; *id.* at 21:25–22:16; Ex. G (referring to Eolas’ technology tutorial which was submitted to the Court and discusses “helper applications”).”

10. Mr. Wulff’s testimony cited by Eolas is irrelevant. Defendants dispute the summary of the testimony in Eolas statement no. 4 and that it properly uses the claim language as construed by the Court and as understood by a person of ordinary skill in the art, particularly the use of the claim term “browser” as opposed to a “web browser,” the latter being the subject of the testimony.

11. Eolas statement no. 5 reads:

“As Mr. Wulff further testified, Acrobat 3—released in November 1996 (nearly two years after the October 1994 filing date of the patents-in-suit and three years after their priority date)—was the first version of Acrobat with the capability of embedding PDF content within a browser controlled window. Ex. F at 24:22–25:5; *see also id.* at 23:7–23 (Adobe did not even have the idea to embed PDF content within a browser controlled window until after the filing date of the patents-in-suit). Mr. Wulff also testified that he has never seen anyone use the 1993 Acrobat to display a PDF embedded in a browser controlled window. *Id.* at 20:18–21:1.”

12. Mr. Wulff’s testimony cited by Eolas is irrelevant. Defendants dispute the summary of the testimony in Eolas statement no. 5 and that it properly uses the claim language as construed by the Court and as understood by a person of ordinary skill in the art, particularly the use of the claim term “browser” as opposed to a “web browser,” the latter being the subject of the testimony.

13. Eolas statement no. 6 reads:

“Defendants’ validity expert, Dr. Phillips, did not offer any opinions as to any alleged invalidity of the patents-in-suit based on the 1993 Acrobat. Ex. H at 1–12.”

14. Whether Dr. Phillips offered “any” opinion regarding 1993 Acrobat is irrelevant. Furthermore, Eolas statement no. 6 is denied. Attached as Exhibit D is an excerpt from Dr. Phillips’ report addressing invalidity of the patents-in-suit in view of the 1993 Acrobat technology. Also attached Exhibit E as are true and correct copies of excerpts from the materials cited in these paragraphs of Dr. Phillips’s report (Exhibit E includes Martin Exhibit 29 and McRae Exhibit 13), and Exhibits B and C, which are true and correct copies of deposition exhibits from the deposition of Eric Bina, which show that the “environment” claim construction issue raised by Eolas was known and inherently part of the state of the prior art more than a year before the patent was filed and discussed as part of the default and expected use of the Acrobat and other software.

15. Eolas statement no. 7 reads:

“Defendants have no evidence applying the claims of the patents-in-suit as construed by the Court to the 1993 Acrobat.”

16. Eolas statement no. 7 is denied. *See* Dkts. 896-02 and 896-03, filed with Defendants’ opening brief, which are Eolas’s infringement contentions against Adobe’s PDF authoring tools and Dkt. 869 at 6 showing the undisputed identity of the alleged infringing functionality as between Acrobat in 1993 and Acrobat presently (reproduced below).



Fig. 1: Eolas's Infringement Contentions Highlighting Interactivity Features

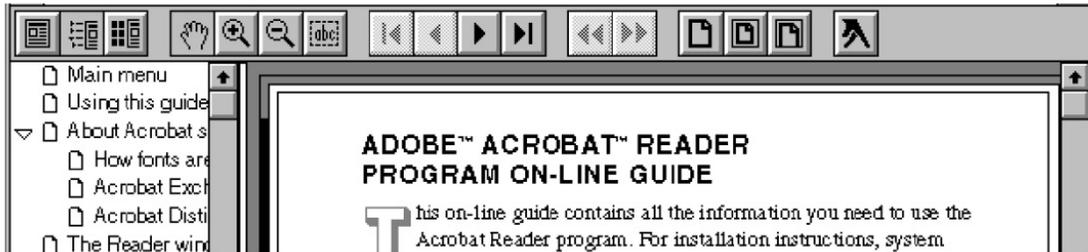


Fig. 2: Acrobat 1.0 Interactivity Features from June 1993

See Mukherji Ex. 1 ('906 patent infringement contentions) at 51 of 146 and Ex. 2 ('985 patent infringement contentions with features highlighted) at 47 of 255; Wulff Ex. A ¶ 22, Ex. 17 (screenshot of interactive features available prior to September 7, 1993). See also Wulff Ex. A ¶¶ 18 and 19, Exs. 13 and 14. The Federal Circuit has explicitly held that a plaintiff's

Executed this 11th day of October 2011, at San Diego, California.

/s/ Jason W. Wolff
 Jason W. Wolff

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 _____