

Exhibit D

Expert Report on Invalidity

ADOBE et al v. EOLAS

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proper recipients and (after applying permission checks) forwards the message to them. The ToolTalk service enables independent applications to communicate with each other without having direct knowledge of each other. Applications create and send ToolTalk messages to communicate with each other. The ToolTalk service receives these messages, determines the recipients, and then delivers the messages to the appropriate applications.

584. Also as I described above, it was well known that HDF formatted data in a distributed processing environment could be provided by Collage, as described in [Collage92]. Among Collage's many features is the ability to establish communication with remote processes, e.g. a simulation running on a supercomputer. These remote processes can be controlled remotely, and images and data can be transported to and from the remote process. Moreover, one can perform most of these operations not only on one machine, but on any machine that is participating in a collaborative session with NCSA Collage. Consequently, collaborators using Mosaic clients and involved in a Collage session can, for example, open and view an HDF (Hierarchical Data Format) file that was produced by a supercomputer computation.

585. In Claim Chart Exhibit 10, I explain on an element-by-element basis why Mosaic and Chris McRae's posting renders obvious all asserted claims of the patents in suit.

6. Mosaic in combination with Adobe PDF related postings to www-talk.

a. Adobe PDF is prior art

586. As I noted above with particular www-talk postings by McRae, I understand that McRae produced several emails published by others to the www-talk mailing list more than a year before the patents were filed. Accordingly, these messages (and the subject matter they disclosed) was known or used by others in this

country before the invention by the applicants of the patents-in-suit, was published before the invention by the applicants of the patents-in-suit, was in public use in this country more than one year prior to the date of application of the patents-in-suit, and was a printed publication more than one year prior to the date of application of the patents-in-suit.

587. Eolas's preliminary infringement contentions accuse Adobe Acrobat of infringement. (*See, e.g.*, 906 - Adobe - PDF - Authoring Tools and Players (Final).pdf at 1 and 105; 985 - Adobe - PDF - Authoring Tools and Players (Final).pdf at 1 and 183.) The functionality alleged to infringe is virtually every feature of Adobe's Acrobat Reader. (*See, e.g.*, 906 - Adobe - PDF - Authoring Tools and Players (Final).pdf at 51 and 61 (61 shown below).)



588. These same features were available in Adobe's Acrobat software more than a year before the patents were filed. As such, if it infringes now, as Eolas alleges, it infringed prior to October 17, 1993 and it is 102(b) prior art. Below is a screen capture from Adobe's Acrobat Reader user manual from prior to October 17, 1993.



589. The zoom and page navigation controls were present in 1993, as were the thumbnails and other navigation and data manipulation options. (ADBE0196072-113; *see also* [Adobe93].)

590. In fact, over the course of discovery, I understand that that it was found that the inventors themselves signed a non-disclosure agreement with Adobe in August of 1993, suggesting that in fact Acrobat could in fact be 102(f) prior art, meaning the inventors derived their invention from Adobe and the www-talk group. (*See* ADBE0195776-777.) In fact, the inventors and individuals who worked with them at UCSF remarked on the Adobe Acrobat and PDF software to the www-talk

group. (See 1993-06-21 0920 email from McRae; 1993-07-20 1314 email from Martin). Compare, for example, [Adobe93] at 79 to the EMBED tag disclosed in the patents: they are remarkably similar.

b. Obviousness based on Mosaic with Acrobat and PDF www-talk postings

591. Beyond the inventors' knowledge of Adobe's Acrobat and PDF standards, upon Adobe's announcement of the alleged infringing technology, the www-talk group was abuzz with discussions of incorporating the functionality into web browsers, such as Mosaic, prior to October 17, 1993. (See 1993-06-21 0920 email from McRae; 1993-07-16 0950 email Cailliau; 1993-07-16 1812 email from Kehoe; 1993-07-19 1309 email from Kehoe; 1993-07-19 1107 email from Altis; 1993-07-19 1552 email from Janssen; 1993-07-19 1355 email from Altis; 1993-07-19 1614 email from Kehoe; 1993-07-20 1848 email from Heaney.) Even the inventors noted the strong interest in the technology. (See 1993-07-19 0855 email from Martin.)

592. As is noted elsewhere in my report too, the Adobe book referenced for example in Dr. Martin's July 19, 1993 email copying co-inventors Doyle and Ang, [Adobe93], the ability to add a special tag to a document with text formats was known. [Adobe93] at 79. It was also known that it was also known that the special tag could refer to another data object, such as an image, sound, or a movie. [Adobe93] at 78-79.

593. It would have been obvious in its own right to include a special tag like that disclosed in [Adobe93] in the Mosaic browser, given the interest in the community of making such mixed-media compound documents, as well it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the Mosaic browser as discussed in the www-talk publications to include the Adobe Acrobat functionality into the browser using a helper, DLL or other external executable application, as is discussed in the www-talk mailings. From a reading of the postings, it is clear there were two choices for implementing this idea:

(1) incorporating the processing of the PDF file directly into the browser, or (2) using a separate executable application to process the PDF file. As the postings suggest, it was not as advantageous to do (1) because the web browser would have to be modified every time a new file type was added to the web, and the application for handling the processing already existed. Reusing the existing application was a natural design choice for a person of ordinary skill in the art, and techniques for making APIs and drivers for interprocess (and intra process) communications were already known, as is detailed elsewhere in my report. (See, e.g., discussion of MediaView.) The issue distills down to whether the PDF file (for example) will be displayed in the browser window or in a separate browser window, which is hardly the type technological advancement beyond the level of ordinary skill in the art at the time, particularly in view of operation of the prior art browser, OLE technology, and the HyperCard technology described in my report. (See also, e.g., 6/15/11 Raggett Depo. at 21:18-29:24 (rough) Exs. 4-8.) In my opinion, this also renders the independent claims obvious and my analysis of the dependent claims would be the same as it is for my charts concerning Mosaic.

7. HyperCard (including Director and Quicktime) and Viola

a. HyperCard as prior art

594. HyperCard software version 2.0 was released by 1990, version 2.1 was released by 1991, and version 2.2 was distributed by December 1993. Corroboration of this can be found, by way of example, in contemporaneous trade publications such as InfoWorld, such as those found in the bates range PA-00321271 through PA-00321298, or by inspection of dates listed in the software.

595. Accordingly, all these versions (and any earlier versions) were known or used by others in this country before the invention by the applicants of the patents-in-suit.