

202. DX34 contains the code for the plotting demo that Pei Wei demonstrated to Sun Microsystems on May 7, 1993, in Northern California.

203. DX37 contains code for a plotting demo similar to the plotting demo in DX34.

204. On May 31, 1993, Pei Wei posted DX37 on a publicly-accessible Internet site and notified an engineer at Sun Microsystems that DX37 was available for downloading.

205. Under 35 U.S.C. § 102(b), DX37 was a “printed publication” over one year before the application for the ‘906 patent was filed.

206. Dr. Kelly testified that the plotting demo in DX34 and DX37 anticipates the asserted claims of the ‘906 patent. Dr. Kelly specifically identified the VOBJF tag, the plot.v file, and the vplot executable application for purposes of his anticipation analysis of DX37.

207. The Federal Circuit has held that Dr. Kelly’s testimony would allow a reasonable jury to conclude that DX37 anticipates at least claims 1 and 6 of the ‘906 patent. *See* 399 F.3d 1325, 1335 (Fed. Cir. 2005).

208. Neither Dr. Kelly nor the third party ever relied on anything other than the plotting demo involving plot.v and vplot to prove anticipation by the ViolaWWW browser.

209. For example, Dr. Kelly never discussed clock.v during the trial in July and August 2003.

210. On information and belief, Doyle attended the trial involving the third party held in July and August 2003.

211. On information and belief, by the end of the trial in August 2003, Doyle knew about and understood the third party’s contention that the plotting demo involving the ViolaWWW browser in DX37 anticipated the asserted claims of the ‘906 patent.

212. On information and belief, by the end of the trial in August 2003, Doyle knew about and understood Pei Wei's testimony that on May 31, 1993 — over one year before the application for the '906 patent was filed — he posted DX37 on a publicly-accessible Internet site and notified an engineer at Sun Microsystems that DX37 was available for downloading.

G. During the 2003 reexamination of the '906 patent, Doyle and Krueger concealed material information about the ViolaWWW plotting demo that Pei Wei and an expert had repeatedly contended anticipated the '906 patent

213. On or about October 30, 2003, the Director of the Patent Office initiated a reexamination of the '906 patent. The control number for this reexamination was 90/006,831.

214. During the 2003 reexamination, Doyle and Krueger withheld information about the ViolaWWW browser with, on information and belief, the specific intent to deceive the Patent Office.

215. Doyle had a financial interest in the patentability of the claimed inventions in the '906 patent. *See supra* ¶¶ 22–30.

216. The ViolaWWW browser threatened the patentability of the claimed inventions in the '906 patent, and thus threatened Doyle's financial interests.

217. On information and belief, Doyle and Krueger were personally involved in the 2003 reexamination of the '906 patent.

218. For example, on or about April 27, 2004, Doyle and Krueger participated in an examiner interview in an effort to confirm the patentability of the claims of the '906 patent application. Doyle gave the examiner a presentation supported by approximately 22 slides prepared by Doyle and Krueger, none of which discussed DX37 or the ViolaWWW browser. Neither Doyle nor Krueger mentioned the ViolaWWW browser during the interview.

219. On or about May 6, 2004, Doyle signed a declaration that was submitted to the Patent Office in an effort to confirm the patentability of the claims of the '906 patent application. This declaration made no mention of DX37 or the ViolaWWW browser.

220. On or about August 18, 2005, Doyle and Krueger participated in an examiner interview in an effort to confirm the patentability of the claims of the '906 patent application. Doyle gave the examiner a presentation supported by approximately 36 slides, none of which discussed DX37 or the ViolaWWW browser.

221. During the 2003 reexamination, Doyle and Krueger submitted selected information from the litigation with the third party concerning the validity of the '906 patent, but he withheld information that would have identified for the examiner the key features of the prior art ViolaWWW browser and how they matched up to the asserted claims of the '906 patent. This proved critical during the 2003 reexamination because when the examiner decided to look at the source code for the ViolaWWW browser, he missed the key points.

222. On or about December 30, 2003, Doyle and Krueger submitted to the Patent Office a CD containing two compressed zip files, one for the "DX34" version of the ViolaWWW source code dated May 12, 1993, and the other for the "DX37" version of the ViolaWWW source code dated May 27, 1993.

223. The compressed zip file for DX34 that Doyle and Krueger submitted to the Patent Office was named *viola930512.tar.gz.zip*. When unzipped, it contained 1,027 files in 35 folders consisting of 8 total megabytes in size.

224. The compressed zip file for DX37 that Doyle and Krueger submitted to the Patent Office was named *violaTOGO.tar.Z.zip*. When unzipped, it contained 1,030 files in 34 folders consisting of 7.7 total megabytes in size.

225. DX34 and DX37 contained source code for the ViolaWWW browser.

226. Source code cannot be executed by a computer. Source code must be compiled into binary code before it can be executed by a computer.

227. Without the compiled binary code, and without a suitable computer capable of executing that binary code (such as a Sun SPARCstation from the early 1990s), the Patent Office had no practical way to see the ViolaWWW browser in operation.

228. Given the voluminous nature of the contents of DX34 and DX37, and the practical inability of the Patent Office to run the ViolaWWW browser on a computer, it was especially important for Doyle and Krueger to be candid with the Patent Office about the contents of DX34 and DX37 so that the Patent Office could focus on the relevant files.

229. On information and belief, Doyle and Krueger were not candid and instead withheld material information that would have assisted the Patent Office in understanding the contents of DX34 and DX37.

230. On information and belief, Doyle and Krueger did not disclose the full contents of DX34 and DX37 in their entirety to the Patent Office during the first reexamination of the '906 patent.

231. On information and belief, the full contents of DX34 and DX37 were not submitted in their entirety until the Invention Disclosure Statement filed on November 1, 2006.

232. For example, during the 2003 reexamination, neither Doyle nor Krueger disclosed to the Patent Office the trial testimony of Pei Wei, who testified about the plotting demo in DX34 and DX37, *see supra* ¶¶ 199-205, nor did either Doyle or Krueger disclose the trial testimony of Dr. Kelly, who testified that the plotting demo in DX34 and DX37 anticipated the asserted claims of the '906 patent, *see supra* ¶¶ 198, 206, nor did either disclose that Dr. Kelly

specifically identified the VOBJF tag, the plot.v file, and the vplot executable application for purposes of his anticipation analysis, *see supra* ¶ 197.

233. On March 2, 2005 — while the 2003 reexamination was still pending — the Federal Circuit held that Dr. Kelly’s testimony would allow a reasonable jury to conclude that DX37 anticipates at least claims 1 and 6 of the ‘906 patent. 399 F.3d 1325, 1335 (Fed. Cir. 2005).

234. Even after the Federal Circuit’s decision, however, Doyle and Krueger still did not disclose Dr. Kelly’s testimony to the Patent Office during the 2003 reexamination, nor did they disclose to the Patent Office that Dr. Kelly’s anticipation analysis relied upon the VOBJF tag, the plot.v file, and the vplot executable application.

235. On or about September 27, 2005, the examiner issued a statement for reasons of patentability in which the examiner confirmed the patentability of claims 1–10 of the ‘906 patent.

236. The examiner’s statement never discussed the plotting demo that Dr. Kelly had testified anticipated the asserted claims of the ‘906 patent.

237. When the examiner considered DX37, the examiner did not know where to look or what to look for. There were too many files in DX37 for the examiner to read himself. Thus the examiner was forced to resort to running text searches across all the files in DX37 in the hope of stumbling across relevant information.

238. The examiner used the “dtSearch” program to index and text search all DX37 files that contained textual content. *See* <http://www.dtsearch.com/>.

239. It is unclear what words the examiner searched for or how he came up with his search terms.

240. On information and belief, Doyle knew precisely what to look for, but he never told the examiner. For example, if Doyle or Krueger had told the examiner to look for plot.v, the examiner's text searches would have quickly found the plotting demo that Dr. Kelly had testified anticipated the asserted claims of the '906 patent.

241. The examiner's text searches did not lead him to the plotting demo, but instead led him to a clock application that used the file clock.v.

242. The file clock.v is a script file that displays the image of a clock. The clock application does not involve any separate executable application. It just involves a webpage and the clock.v script file.

243. The examiner reasoned that a script file like clock.v does not satisfy the "executable application" requirement of the claims of the '906 patent, and thus the examiner concluded that DX37 does not anticipate the asserted claims of the '906 patent.

244. The ViolaWWW source code teaches two ways of creating interactive webpages using embedded applications. One way is by using a simple script file, such as clock.v. All that is required is a webpage (such as violaApps.html) and the script file (such as clock.v). No binary executable application is involved. The other way taught by the ViolaWWW source code does use a binary executable application (such as vplot) in addition to a webpage and a file that contains the object (such as plot.v). The examiner did not consider this second way during the 2003 reexamination; he only considered the first way, and thus erroneously confirmed the patentability of the asserted claims of the '906 patent.

245. The examiner's reasons for patentability included the following statements:

The Viola system uses "C-like" Viola scripts that must be INTERPRETED by the browser and then TRANSLATED or CONVERTED into binary native executable machine code that can be understood by the CPU. Alternately, the Viola script is

precompiled into intermediate byte-code form and the byte-code is interpreted (i.e., translated) into binary native executable machine code at runtime. This extra step of translation results in an unavoidable performance penalty, as interpreted applications run much slower than compiled native binary executable applications.

Accordingly, the “C-like” Viola scripts (or corresponding byte-code representations) are not “executable applications”

246. The examiner’s reasoning overlooked the fact that the plotting demo in DX37 does use a separate executable application: vplot.

247. On information and belief, Doyle and Krueger knew that the plotting demo used a separate executable application, but Doyle and Krueger did not bring this fact to the examiner’s attention and instead allowed the examiner to confirm the patentability of the claims of the ‘906 patent on the basis of an incomplete understanding of DX37.

248. On information and belief, Doyle and Krueger knew that the plotting demo used a separate executable application for at least the following reasons:

- The August 1994 Viola paper, which states “This next mini application front-ends a graphing process (on the same machine as the viola process)” and which shows the plot of a fighter jet in a window titled “XPlot.” *See supra* ¶¶ 48-49.
- Pei Wei’s message to Doyle on September 1, 1994, which included the following statements: “[A]s for the plotting demo, it actually is really just a front-end that fires up a back-end plotting program (and the point is that that back-end could very well be running on a remote super computer instead of the localhost). For that demo, there is a simple protocol such that the front-end app could pass an X window ID to the back-end, and the back-end draws

the graphics directly onto the window *violaWWW* has opened for it.” *See supra* ¶ 61.

- The source code listed in the “Viola stuff” file included the file *plotDemo.html*, which states, “This is a demo of *ViolaWWW* embedding a *viola* front-ending object that is programmed to start up and communicate with a plot process. The front-end tells the plot program the window ID to draw to, and gives it the camera coordinate changes.” When the file *plotDemo.html* is parsed, it shows the plot of a fighter jet in a window titled “XPlot.” *See supra* ¶¶ 108-110.
- Pei Wei’s presentation at Stanford in September 1994, which included the following statements: “The next example is a front-end application to a backend. And the back-end is what actually does the computation and the drawing.” Included with the presentation was a screenshot of the *ViolaWWW* browser after parsing the file *plotDemo.html*. The screenshot shows the plot of a fighter jet in a window titled “XPlot.” The text in the webpage states, “This is a demo of *ViolaWWW* embedding a *viola* front-ending object that is programmed to start up and communicate with a plot process. The front-end tells the plot program the window ID to draw to, and gives it the camera coordinate changes.” *See supra* ¶ 118.
- The trial testimony of Pei Wei. *See supra* ¶ 199.
- The expert opinion of Dr. Kelly. *See supra* ¶¶ 197-198, 206.

249. Doyle and Krueger’s failure to tell the examiner about the *vplot* and *plot.v* files, and failure to disclose documents from the litigation that identified how Dr. Kelly matched up

the plotting demo in DX37 with the claims of the '906 patent, both alone and in combination with Doyle and Krueger's prior failure to disclose the ViolaWWW browser during the original prosecution of the '906 patent, constituted a knowing and intentional violation of their duty of candor and good faith in dealing with the Patent Office.

250. On information and belief, the Patent Office would not have confirmed the patentability of the claims of the '906 patent that were the subject of the 2003 reexamination if Doyle and Krueger had not engaged in inequitable conduct and instead had fulfilled their duty of candor and good faith in dealing with the Patent Office.

H. Doyle and Krueger's inequitable conduct during the 2003 reexamination infected the 2005 reexamination

251. On or about December 22, 2005, a third party filed a request to reexamine the '906 patent.

252. On or about February 9, 2006, the Patent Office granted the request to reexamine the '906 patent. The control number for this reexamination was 90/007,858.

253. Doyle had a financial interest in the patentability of the claimed inventions in the '906 patent. *See supra* ¶¶ 22–30.

254. The ViolaWWW browser threatened the patentability of the claimed inventions in the '906 patent, and thus threatened Doyle's financial interests.

255. On information and belief, Doyle and Krueger were personally involved in the 2005 reexamination of the '906 patent.

256. For example, on or about September 6, 2007, Doyle and Krueger participated in an examiner interview in an effort to confirm the patentability of the claims of the '906 patent application.

257. On or about October 1, 2007, Doyle submitted a declaration to the Patent Office in an effort to establish an earlier date of invention for the claims of the '906 patent application.

258. On or about May 9, 2008, Doyle and Krueger participated in another examiner interview in an effort to confirm the patentability of the claims of the '906 patent application.

259. On or about June 3, 2008, Doyle and Krueger participated in another examiner interview in an effort to confirm the patentability of the claims of the '906 patent application.

260. Doyle and Krueger's inequitable conduct during the 2003 reexamination infected the 2005 reexamination.

261. Although Doyle and Krueger disclosed material information about the ViolaWWW browser to the Patent Office during the 2005 reexamination, by that time it was too late.

262. For example, Doyle and Krueger disclosed the August 1994 Viola paper to the Patent Office on or about August 21, 2006.

263. This was the first time Doyle and Krueger had disclosed the August 1994 Viola paper to the Patent Office.

264. On information and belief, Doyle knew about the Viola paper no later than August 31, 1994, *see supra* ¶¶ 44–49, 56, but Doyle waited over 10 years — and two prosecutions of the '906 patent — to disclose that paper to the Patent Office.

265. On information and belief, Krueger knew about the August 1994 Viola paper no later than August of 1998, but waited 8 years — and two prosecutions of the '906 patent — to disclose that paper to the Patent Office

266. Shortly after Doyle and Krueger disclosed the August 1994 Viola Paper to the Patent Office during the 2005 reexamination, the Patent Office rejected all claims of the '906 patent.

267. In particular, on or about July 30, 2007, the Patent Office rejected all claims of the '906 patent as being anticipated by DX95, which includes a copy of the text found in Pei Wei's August 1994 Viola paper, *see supra* ¶ 48.

268. The rejection based on the August 1994 Viola paper confirms that the ViolaWWW browser was material prior art.

269. Doyle and Krueger did not respond to the merits of the rejection based on the August 1994 Viola paper. Instead Doyle filed a declaration asserting that his date of invention was before August 16, 1994.

270. In response to Doyle's declaration, the examiner withdrew the rejection based on the August 1994 Viola paper.

271. The 2005 examiner could have entered a new rejection based on DX37, which was a printed publication before the alleged conception of the inventions claimed in the '906 patent, but the 2005 examiner did not independently examine DX37 because the 2003 examiner had already concluded that DX37 did not invalidate the asserted claims of the '906 patent.

272. The conclusions about DX37 reached in the 2003 reexamination were erroneous due to Doyle and Krueger's inequitable conduct during that reexamination. *See supra* ¶¶ 229-250.

273. Thus, Doyle and Krueger's inequitable conduct during the 2003 reexamination infected the 2005 reexamination.

III. **Doyle submitted false statements about the secondary considerations of non-obviousness**

274. During the original prosecution of the '906 patent, Doyle submitted a declaration to the Patent Office containing false and misleading statements in an effort to obtain allowance of the claims.

275. Specifically, on or about June 2, 1997, Doyle submitted to the Patent Office a sworn declaration executed on or about May 27, 1997, for the purpose of overcoming the examiner's rejection on March 26, 1997.

276. On page 12 of the declaration, Doyle asserted that his claimed invention would not have been obvious over the cited prior art in view of "secondary considerations, including, in part, commercial success of products incorporating features of the claimed invention and industry recognition of the innovative nature of these products."

277. In support of his assertion, Doyle declared to the Patent Office that Sun Microsystems and Netscape had incorporated his invention into their Java software and Navigator Web browser, respectively. He stated: "Approximately 12 to 18 months after the applicants initially demonstrated the first Web plug-in and applet technology to the founders of Netscape and engineers employed by Sun Microsystems in November and December of 1993, as described in reference #4 from Appendix A (Dr. Dobb's Journal, 2/96), both Netscape and Sun released software products that incorporated features of the claimed invention"

278. On information and belief, this statement was false. Neither Doyle nor any of the other named inventors of the '906 patent demonstrated Web plug-in technology to any of the founders of Netscape in November or December of 1993.

279. On information and belief, when Doyle made these statements under oath, he also did not know whether any engineer employed by Sun Microsystems ever saw any of his demonstrations in November or December of 1993.

280. Doyle made these same false assertions in slides that he prepared and presented to the examiner in a personal interview on or about February 24, 1997. On a slide entitled “Relevant History of DHOE” (Doyle’s name for his invention), Doyle included as a bullet point: “1993 Demos to Sun & Netscape’s Founders.”

281. Doyle’s false statements in his declaration were material to the patentability of the pending claims. These statements purported to provide evidence of copying by others and thus objective evidence of nonobviousness, a factor to be considered in determining whether an alleged invention is patentable over the prior art. Without these false assertions, Doyle had no support for his argument that Netscape and Sun copied his alleged invention or that his technology was responsible for their commercial success.

282. By making these false statements under oath to the Patent Office, on information and belief, Doyle intended to mislead the Patent Office to believe that responsible persons at Netscape and Sun saw his alleged invention, appreciated its supposed merits, and therefore incorporated it into the Navigator browser and Java. Moreover, by making these false statements, Doyle, on information and belief, was trying to convince the Patent Office that the Netscape and Sun products succeeded because they incorporated his alleged invention.

283. Doyle’s submission of false statements under oath in his declaration to the Patent Office constituted a knowing and intentional violation of his duty of candor and good faith in dealing with the Patent Office.

IV. **Conclusion**

284. A judicial determination of the respective rights of the parties with respect to the unenforceability of the claims of the ‘906 Patent is now necessary and appropriate under 28 U.S.C. § 2201.

COUNT IV

285. Staples incorporates by reference the allegations contained in Paragraphs 1 to 5 of its Counterclaims.

286. An actual controversy exists between the parties with respect to the alleged infringement '985 Patent.

287. Although Eolas alleges in its Complaint that Staples has directly and/or indirectly infringed the claims of the '985 Patent, Staples has not directly and/or indirectly infringed, and does not directly and/or indirectly infringe, any claim of the '985 Patent.

288. A judicial determination of the respective rights of the parties with respect to the infringement of the claims of the '985 Patent is now necessary and appropriate under 28 U.S.C. § 2201.

COUNT V

289. Staples incorporates by reference the allegations contained in Paragraphs 1 to 5 of its Counterclaims.

290. An actual controversy exists between the parties with respect to the invalidity of the '985 Patent.

291. Although Eolas alleges in its Complaint that the '985 Patent was duly and legally issued by the United States Patent and Trademark Office after full and fair examination, each and every claim of the '985 Patent is invalid for failure to comply with the patent laws, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, 112, and 113.

292. A judicial determination of the respective rights of the parties with respect to the infringement of the claims of the '985 Patent is now necessary and appropriate under 28 U.S.C. §2201.

COUNT VI

293. Staples incorporates by reference the allegations contained in Paragraphs 1 to 5 of its Counterclaims.

294. An actual controversy exists between the parties with respect to the unenforceability of the '985 Patent.

295. Although Eolas alleges in its Complaint that the '985 Patent was duly and legally issued by the United States Patent and Trademark Office after full and fair examination, each and every claim of the '985 Patent is unenforceable due to inequitable conduct before the United States Patent and Trademark Office.

296. Staples incorporates by reference the allegations contained in Paragraphs 17 to 268 of its Counterclaims.

297. The actions of Doyle and Krueger demonstrate a broad pattern of inequitable conduct that infected the prosecution of the '906 patent, the reexaminations of the '906 patent, and the prosecution of the '985 patent.

298. The application that matured into the '985 patent was filed on August 9, 2002.

299. The application number for the '985 patent was 10/217,955. This application was a continuation of a continuation of the application that had matured into the '906 patent.

300. Eolas had and still has rights to the patent application that matured into the '985 patent.

301. On information and belief, Doyle was personally involved in the prosecution of the '985 patent at the same time that he had a financial interest in Eolas.

302. On information and belief, Doyle knew that Eolas could assert the '985 patent in litigation to seek substantial settlements and/or damage awards, and thus the prosecution of the '985 patent was relevant to Doyle's financial interest in Eolas.

303. Doyle and his co-inventors are entitled to receive a portion of any royalties paid to The Regents of the University of California related to the '985 patent, and for this reason as well the prosecution of the '985 patent was relevant to Doyle's financial interests.

304. The claims at issue during prosecution of the '985 patent were similar to the claims at issue during the reexaminations of the '906 patent.

305. Accordingly, the information that Doyle and Krueger withheld during prosecution of the '906 patent was material to the patentability of the claims at issue during prosecution of the '985 patent for the same reasons previously stated.

306. As a result of the similarity between the claims at issue during prosecution of the '985 patent, and the claims of the '906 patent, the Patent Office issued a "double patenting" rejection during prosecution of the '985 patent. The rejection was issued on or about July 20, 2004.

307. To overcome the "double patenting" rejection during prosecution of the '985 patent, a terminal disclaimer was filed on or about March 7, 2005. As a result of the terminal disclaimer, the '985 patent may be in force up until November 17, 2015, the date on which the '906 patent will expire.

308. For at least this reason, Doyle and Krueger's inequitable conduct during the prosecution of the '906 patent infected the prosecution of the '985 patent.

309. On or about May 5, 2005, the Patent Office suspended prosecution of the '985 patent in light of the 2003 reexamination of the '906 patent. The Patent Office determined that the outcome of the 2003 reexamination had a material bearing on the patentability of the claims at issue during prosecution of the '985 patent.

310. For at least this reason, Doyle and Krueger's inequitable conduct during the 2003 reexamination of the '906 patent infected the prosecution of the '985 patent.

311. On or about January 18, 2006, the Patent Office suspended prosecution of the '985 patent in light of the 2005 reexamination of the '906 patent. The Patent Office determined that the outcome of the 2005 reexamination had a material bearing on the patentability of the claims at issue during prosecution of the '985 patent.

312. For at least this reason, Doyle and Krueger's inequitable conduct during the 2005 reexamination of the '906 patent infected the prosecution of the '985 patent.

313. On or about April 11, 2008, the claims at issue during prosecution of the '985 patent were amended to claim substantially the same subject matter claimed in the '906 patent.

314. Accordingly, the Patent Office did not undertake a separate substantive examination of the patentability of the claims in the '985 patent. Instead, the Patent Office simply applied the results of the prosecution of the '906 patent (including the results of the two reexaminations of the '906 patent) to the '985 patent.

315. For at least this reason, Doyle and Krueger's inequitable conduct during the prosecution and reexaminations of the '906 patent infected the prosecution of the '985 patent.

316. On or about November 13, 2008, a request was filed to lift the stay on the prosecution of the '985 patent in light of the completion of the 2005 reexamination of the '906 patent.

317. On or about March 20, 2009, the Patent Office allowed the claims in the '985 patent for the same reasons set forth by the Patent Office during the reexaminations of the '906 patent.

318. The examiner's reasons for allowance patent included the following statement: "[T]he claims [of the '985 patent] are allowable as the claims contain the subject matter deemed allowable in both Re exam 90/006,831 [the 2003 reexamination of the '906 patent] and Re exam 90/007,838 [the 2005 reexamination of the '906 patent] for the same reasons as set forth in the NIRC of the two Re exams."

319. The examiner's reasons for allowance of the '985 patent confirm that Doyle and Krueger's inequitable conduct during the prosecution and reexaminations of the '906 patent infected the prosecution of the '985 patent.

320. Eolas filed the complaint in this action on October 6, 2009, the same day that the '985 patent issued.

321. As a result of Doyle and Krueger's pattern of inequitable conduct, Eolas came to this Court with unclean hands.

322. As a result of Doyle and Krueger's inequitable conduct, and the unclean hands of Eolas, the '906 and '985 patents are unenforceable.

323. A judicial determination of the respective rights of the parties with respect to the unenforceability of the claims of the '985 Patent is now necessary and appropriate under 28 U.S.C. § 2201.

REQUESTS FOR RELIEF

Staples respectfully requests that this Court grant the following relief:

- A. Dismissal of the Second Amended Complaint for Patent Infringement against Staples with prejudice;
- B. A declaration that Plaintiff recovers nothing from Staples;
- C. An order enjoining Plaintiff, its owners, agents, employees, attorneys, and representatives, and any successors or assigns thereof, from charging or asserting infringement of any claim of the '906 Patent and the '985 Patent against Staples or anyone in privity with Staples;

- D. An award to Staples of its reasonable attorneys' fees and costs;
- E. A declaration that Staples has not infringed any claim of the '906 Patent, either directly or indirectly;
- F. A declaration that each and every claim of the '906 Patent is invalid;
- G. A declaration that each and every claim of the '906 Patent is unenforceable;
- H. A declaration that Staples has not infringed any claim of '985 Patent, either directly or indirectly;
- I. A declaration that each and every claim of the '985 Patent is invalid;
- J. A declaration that each and every claim of the '985 Patent is unenforceable; and
- K. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Under Federal Rule of Civil Procedure 38(b), Staples respectfully requests a trial by jury on all matters raised in its Answer, and Defenses, or in the Amended Complaint for Patent Infringement.

Date: October 14, 2011

Respectfully submitted,

/s/ Michael E. Richardson

Michael E. Richardson, TX Bar No. 24002838
BECK REDDEN & SECREST
1221 McKinney, Suite 4500
Houston, TX 77010
Telephone: (713) 951-6284
Facsimile: (713) 951-3720
mrichardson@brsfirm.com

Mark G. Matuschak, admitted *pro hac vice*
Donald R. Steinberg, admitted *pro hac vice*
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000

Facsimile: (617) 526-5000
mark.matuschak@wilmerhale.com
donald.steinberg@wilmerhale.com

Kate Hutchins, admitted *pro hac vice*
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, NY 10011
Telephone: (212) 230-8800
Facsimile: (212) 230-8888
kate.hutchins@wilmerhale.com

Daniel V. Williams, admitted *pro hac vice*
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
daniel.williams@wilmerhale.com

**ATTORNEYS FOR DEFENDANT
STAPLES, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile transmission and/or first class mail this 14th day of October, 2011.

/s/ Michael E. Richardson

Michael E. Richardson