

Plaintiffs the Regents of the University of California and Eolas Technologies Inc. (collectively, “Plaintiffs”), file this response in opposition to Amazon, Inc’s motion for a separate trial, Dkt. 1134. Amazon requests “an individual and separate trial” for the same “reasons discussed in Defendant Yahoo!, Inc’s Motion for Separate Trials.” *Id.* at 1; Dkt. 1133 at 1-15. Amazon’s motion thus adds little to Yahoo!’s motion on the same topic, and it is noteworthy only because it confirms that accepting Yahoo!’s arguments would lead to the conclusion that “separate trials for each individual defendant are necessary” in this case. Dkt. 1134 at 1. But as explained in Plaintiffs’ response to Yahoo!’s motion, filed contemporaneously with this response, Defendants’ proposal for a lengthy series of separate and independent trials covering substantially overlapping questions of law and fact would create tremendous inefficiencies and numerous opportunities for inconsistent or competing results. Such a result is of course precluded by controlling case law and common sense. For the reasons discussed in Plaintiffs’ response to Yahoo!’s motion, therefore, the Court should deny Amazon’s motion for one more in a potentially long line of individual and separate trials.

Dated: December 21, 2011.

McKool Smith, P.C.

/s/ Mike McKool

Mike McKool

Lead Attorney

Texas State Bar No. 13732100

mmckool@mckoolsmith.com

Douglas Cawley

Texas State Bar No. 04035500

dcawley@mckoolsmith.com

Holly Engelmann

Texas State Bar No. 24040865

hengelmann@mckoolsmith.com

McKool Smith, P.C.

300 Crescent Court, Suite 1500

Dallas, Texas 75201

Telephone: (214) 978-4000

Telecopier: (214) 978-4044

Kevin L. Burgess

Texas State Bar No. 24006927

kburgess@mckoolsmith.com

Josh W. Budwin

Texas State Bar No. 24050347

jbudwin@mckoolsmith.com

Gretchen K. Curran

Texas State Bar No. 24055979

gcurran@mckoolsmith.com

Matthew B. Rappaport

Texas State Bar No. 24070472

mrappaport@mckoolsmith.com

J.R. Johnson

Texas State Bar No. 24070000

jjohnson@mckoolsmith.com

McKool Smith, P.C.

300 West Sixth Street, Suite 1700

Austin, Texas 78701

Telephone: (512) 692-8700

Telecopier: (512) 692-8744

Robert M. Parker
Texas State Bar No. 15498000
rmparker@pbatyler.com
Robert Christopher Bunt
Texas Bar No. 00787165
rcbunt@pbatyler.com
Andrew T. Gorham
Texas State Bar No. 24012715
tgorham@pbatyler.com
PARKER, BUNT & AINSWORTH, P.C.
100 E. Ferguson, Suite 1114
Tyler, Texas 75702
(903) 531-3535
(903) 533-9687- Facsimile

**ATTORNEYS FOR PLAINTIFF
EOLAS TECHNOLOGIES INC.
AND THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via e-mail and the Court's ECF system on December 21, 2011.

/s/ Josh Budwin
Josh Budwin