

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

Eolas Technologies Incorporated,	§	
	§	
<i>Plaintiff,</i>	§	C.A. NO. 6:09-CV-446 (LED)
	§	
v.	§	
	§	
Adobe Systems Inc., Amazon.com, Inc.,	§	JURY TRIAL DEMANDED
Apple Inc., Argosy Publishing, Inc.,	§	
Blockbuster Inc., CDW Corp.,	§	
Citigroup Inc., eBay Inc., Frito-Lay, Inc.,	§	
The Go Daddy Group, Inc., Google Inc.,	§	
J.C. Penny Company, Inc., JPMorgan	§	
Chase & Co., New Frontier Media, Inc.,	§	
Office Depot, Inc., Perot Systems Corp.,	§	
Playboy Enterprises International, Inc.,	§	
Rent-A-Center, Inc., Staples, Inc., Sun	§	
Microsystems Inc., Texas Instruments, Inc.,	§	
Yahoo! Inc., and YouTube, LLC	§	
	§	
<i>Defendants.</i>	§	
	§	

**PLAYBOY ENTERPRISES INTERNATIONAL, INC.'S  
ANSWER AND DEFENSES**

Defendant Playboy Enterprises International, Inc. (“Playboy”) files this answer to Eolas Technologies Incorporated (“Eolas” or “Plaintiff”) Complaint and hereby states as follows:

**PARTIES**

1. Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint and therefore denies those allegations.
2. Paragraph 2 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint and therefore denies those allegations.

3. Paragraph 3 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Complaint and therefore denies those allegations.

4. Paragraph 4 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Complaint and therefore denies those allegations.

5. Paragraph 5 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Complaint and therefore denies those allegations.

6. Paragraph 6 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Complaint and therefore denies those allegations.

7. Paragraph 7 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint and therefore denies those allegations.

8. Paragraph 8 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint and therefore denies those allegations.

9. Paragraph 9 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint and therefore denies those allegations.

10. Paragraph 10 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint and therefore denies those allegations.

11. Paragraph 11 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint and therefore denies those allegations.

12. Paragraph 12 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint and therefore denies those allegations.

13. Paragraph 13 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint and therefore denies those allegations.

14. Paragraph 14 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Complaint and therefore denies those allegations.

15. Paragraph 15 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Complaint and therefore denies those allegations.

16. Paragraph 16 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Complaint and therefore denies those allegations.

17. Paragraph 17 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint and therefore denies those allegations.

18. Admitted.

19. Paragraph 19 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint and therefore denies those allegations.

20. Paragraph 20 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Complaint and therefore denies those allegations.

21. Paragraph 21 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of the Complaint and therefore denies those allegations.

22. Paragraph 22 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of the Complaint and therefore denies those allegations.

23. Paragraph 23 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Complaint and therefore denies those allegations.

24. Paragraph 24 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 24 of the Complaint and therefore denies those allegations.

## **JURISDICTION AND VENUE**

25. Paragraph 25 of the Complaint does not require a response from Playboy.

26. Playboy admits that Paragraph 26 of the Complaint alleges that this is an action arising under the patent laws of the United States, Title 35 of the United States Code, but denies the merits of such action. Playboy admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a).

27. Playboy admits that this Court has personal jurisdiction over it for purposes of this action. Playboy specifically denies that it has committed patent infringement in the State of Texas, in the Eastern District of Texas, or in any other state or judicial district. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the Complaint and therefore denies those allegations.

28. With respect to Playboy, Playboy admits that this Court has personal jurisdiction over it for purposes of this action and therefore, the statutory requirements for venue under 28 U.S.C. §§ 1391(b)-(c) and 1400 are met. However, while venue may be had in the Eastern District of Texas, this forum is inconvenient and burdensome to Playboy. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 28 of the Complaint and therefore denies those allegations.

### **ANSWER TO INFRINGEMENT ALLEGATION REGARDING U.S. PATENT NOS. 5,838,906 and 7,599,985**

29. Paragraph 29 of the Complaint does not require a response from Playboy.

30. Playboy admits that United States Patent No. 5,838,906 (“the ’906 Patent”) entitled “Distributed hypermedia method for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document,” and United States

Patent No. 7,599,985 (“the ‘985 Patent”) entitled “Distributed hypermedia method and system for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document” were issued by the United States Patent and Trademark Office on November 17, 1998 (‘906 Patent) and October 6, 2009 (‘985 Patent) respectively. Playboy lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 30, and therefore denies the same.

31. Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 31 of the Complaint and therefore denies those allegations.

32. Paragraph 32 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 32 of the Complaint and therefore denies those allegations.

33. Paragraph 33 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 33 of the Complaint and therefore denies those allegations.

34. Paragraph 34 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 34 of the Complaint and therefore denies those allegations.

35. Paragraph 35 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 35 of the Complaint and therefore denies those allegations.

36. Paragraph 36 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 36 of the Complaint and therefore denies those allegations.

37. Paragraph 37 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 37 of the Complaint and therefore denies those allegations.

38. Paragraph 38 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 38 of the Complaint and therefore denies those allegations.

39. Paragraph 39 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 39 of the Complaint and therefore denies those allegations.

40. Paragraph 40 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 40 of the Complaint and therefore denies those allegations.

41. Paragraph 41 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 41 of the Complaint and therefore denies those allegations.

42. Paragraph 42 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 42 of the Complaint and therefore denies those allegations.

43. Paragraph 43 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 43 of the Complaint and therefore denies those allegations.

44. Paragraph 44 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 44 of the Complaint and therefore denies those allegations.

45. Paragraph 45 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 45 of the Complaint and therefore denies those allegations.

46. Paragraph 46 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 46 of the Complaint and therefore denies those allegations.

47. Paragraph 47 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 47 of the Complaint and therefore denies those allegations.

48. Denied.

49. Paragraph 49 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 49 of the Complaint and therefore denies those allegations.

50. Paragraph 50 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 50 of the Complaint and therefore denies those allegations.

51. Paragraph 51 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 51 of the Complaint and therefore denies those allegations.



52. Paragraph 52 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 52 of the Complaint and therefore denies those allegations.

53. Paragraph 53 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 53 of the Complaint and therefore denies those allegations.

54. Paragraph 54 of the Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 54 of the Complaint and therefore denies those allegations.

55. With respect to Playboy, Playboy denies that Playboy has infringed (whether willfully or otherwise) the '906 patent. Playboy further denies any knowledge of the '906 patent prior to the filing of this action. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 55 of the Complaint and therefore denies those allegations.

56. With respect to Playboy, Playboy denies that Playboy has infringed, either directly or indirectly, any claim of the '906 patent or the '985 patent. Playboy further denies that Eolas has suffered or will suffer any injury due to Playboy's accused acts or practices and denies Eolas is entitled to any relief, whether monetary or injunctive. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 56 of the Complaint and therefore denies those allegations.

57. With respect to Playboy, Playboy denies that Playboy has infringed, either directly or indirectly, any claim of the '906 patent or the '985 patent. Playboy further denies that Eolas has suffered or will suffer any injury due to Playboy's accused acts or practices and denies Eolas is

entitled to any relief, whether monetary or injunctive. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 57 of the Complaint and therefore denies those allegations.

58. With respect to Playboy, Playboy denies that Playboy has infringed, either directly or indirectly, any claim of the '906 patent or the '985 patent. Playboy further denies that Eolas has suffered or will suffer any injury due to Playboy's accused acts or practices and denies Eolas is entitled to any relief, whether monetary or injunctive. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 58 of the Complaint and therefore denies those allegations.

#### **ANSWER TO PRAYER FOR RELIEF**

59. Playboy denies that Plaintiff is entitled to any of the relief requested in its Complaint.

#### **JURY DEMAND**

60. Paragraph 60 of the Complaint does not require a response from Playboy.

#### **DEFENSES**

61. Without conceding that any of the following necessarily must be pled as an affirmative defense, or that any of the following is not already at issue by virtue of the foregoing denials, and without prejudice to Playboy's right to plead additional defenses as discovery into the facts of the matter warrant, Playboy hereby asserts the following defenses. Playboy specifically reserves the right to amend its defenses further as additional information is developed through discovery or otherwise.

### **FIRST DEFENSE**

62. Playboy does not infringe and has not infringed (either directly, contributorily, or by inducement) any claim of the '906 patent or the '985 patent either literally or under the doctrine of equivalents.

### **SECOND DEFENSE**

63. The claims of the '906 patent and the '985 patent are invalid and/or unenforceable for failing to meet the requirements of one or more sections of Title 35, United States Code, including at least sections 102, 103, and/or 112, and one or more sections of Title 37, Code of Federal Regulations.

### **THIRD DEFENSE**

64. Plaintiff is estopped by the prosecution history of the '906 patent and the '985 patent from asserting infringement of any claim of the '906 patent and the '985 patent.

### **FOURTH DEFENSE**

65. Plaintiff's claim for damages are limited in time by 35 U.S.C. § 286.

### **FIFTH DEFENSE**

66. Without shifting the burden of proof, which lies with Plaintiff, Playboy avers that the Complaint fails to plead, and that Plaintiff cannot carry their burden to prove compliance with, or an exception to, the notice requirements of the patent laws, Title 35 of the United States Code, including, but not limited to, 35 U.S.C. § 287, and therefore that alleged damages, if any, predating Plaintiff's assertion of the '906 patent and the '985 patent against Playboy are not recoverable by Plaintiff.

**SIXTH DEFENSE**

67. Plaintiff's claims against Playboy are barred in whole or in part by one or more of the equitable doctrines of laches, estoppel, and/or waiver.

**SEVENTH DEFENSE**

68. Plaintiff's Complaint fails to state a claim for which relief can be granted.

Dated: December 17, 2009

Respectfully submitted,

VINSON & ELKINS L.L.P.

/s/ Avelyn M. Ross

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Playboy Enterprises International, 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 17th day of December, 2009.

/s/ Avelyn M. Ross  
Avelyn M. Ross