

**UNITED STATES DISTRICT COURT
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.

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CIVIL ACTION NO. 6:09-CV-446 (LED)

**DEFENDANTS' MOTION FOR LEAVE TO
DESIGNATE ADDITIONAL EXHIBITS**

This case still includes ten disparate defendants – each accused of infringing multiple claims of two patents. Indeed, Plaintiffs still assert over 20 claims and accuse at least, if not more than, 100 products/features. Based upon the breadth of Plaintiffs' case, all ten Defendants cannot reasonably be expected to approach this trial with only 250 combined exhibits. In fact, under the current limits each defendant would be required to defend against Plaintiffs' vast expanse of infringement claims, defend against Plaintiffs' damages theories, and prove invalidity by clear and convincing evidence based upon only 25 exhibits apiece. Not only would this exhibit limit prejudice Defendants, it would preclude Defendants from being able to fully present each of the defenses they are entitled to present. As such, Defendants seek leave from this Court to designate 250 exhibits common to all defendants plus 150 exhibits for each individual defendant. While Defendants have reached out to Plaintiffs with multiple proposals in an attempt to reach an agreement regarding the limitation of exhibits, Defendants have been met

with nothing more than a resounding “no.” *See* Exhibit 1, Emails between J. Thane and J. Campbell.¹

This is not a case where a defendant is seeking to designate a large number of exhibits only to frustrate the system. Here, the ten Defendants are seeking to acquire leave to designate exhibits necessary to defend themselves in this expansive lawsuit. In fact, Plaintiffs (of which there are only two) have also sought leave to exceed the Court’s standing order. Defendants do not oppose Plaintiffs’ request for 400 total exhibits, even though Plaintiffs have relentlessly held Defendants’ feet to the fire on this topic. Extrapolating the 400 exhibits requested by Plaintiffs over the ten Defendants remaining in this case would result in some 2000 exhibits. While the total number of exhibits requested by Defendants is therefore larger than the number requested by Plaintiffs, on a per-party basis, the number is significantly smaller.

Plaintiffs’ argument that Defendants sought an extension of the exhibit list deadline based upon the Court’s standing order application should fall on deaf ears. During the negotiations to extend an earlier exhibit designation deadline Defendants informed Plaintiffs of the Court’s standing order regarding exhibits. Further, Defendants informed Plaintiffs that they were working under the assumption that the Court’s standing order applies to this case. Defendants, however, never made a representation that they would not seek leave to exceed the Court’s limitation if ten defendants remained in the case when the exhibit designation approached. While Defendants have worked together in an attempt to limit the number of designated exhibits, they cannot be expected to limit themselves to 25 exhibits a piece.

¹ In addition, Defendants also asked for a short extension of the deadline for exchanging exhibit lists so that the ten remaining defendants could further coordinate in attempt to streamline their exhibits, but Plaintiffs likewise refused that request. As such, Defendants anticipate serving an amended exhibit list early next week. Of note, during the last two weeks of December some Defendants received for the first time a hard drive containing approximately 350,000 documents from the University of California. It is unreasonable to think those documents could be reviewed and designated in such a short time period.

As such, Defendants request leave to designate 250 exhibits common to all defendants plus 150 exhibits for each individual defendant.

Respectfully submitted,

/s/ Jennifer H. Doan

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this the 5th day of January, 2012.

/s/ Jennifer H. Doan

Jennifer H. Doan

CERTIFICATE OF CONFERENCE

Counsel for Amazon and Yahoo! conferred with counsel for Plaintiffs via e-mail on numerous occasions and in person on January 4, 2012. The parties have not been able to reach an agreement and Plaintiffs oppose this motion.

/s/ Joshua R. Thane _____
Joshua R. Thane