

**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.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

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.<sup>1</sup>

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.

---

<sup>1</sup> Given the complexities of coordinating between ten defendants, 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

Jennifer H. Doan (TX Bar No. 08809050)  
Joshua R. Thane (TX Bar No. 24060713)  
HALTOM & DOAN  
6500 Summerhill Road, Suite 100  
Texarkana, TX 75503  
Telephone: (903) 255-1000  
Facsimile: (903) 255-0800  
Email: jdoan@haltomdoan.com  
Email: jthane@haltomdoan.com

Edward R. Reines  
Jared B. Bobrow  
Sonal N. Mehta  
Aaron Y. Huang  
Andrew L. Perito  
WEIL, GOTSHAL & MANGES LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065  
Telephone: (650) 802-3000  
Facsimile: (650) 802-3100  
Email: edward.reines@weil.com  
Email: jared.bobrow@weil.com  
Email: sonal.mehta@weil.com  
Email: aaron.huang@weil.com  
Email: andrew.perito@weil.com

Doug W. McClellan  
WEIL, GOTSHAL & MANGES LLP  
700 Louisiana, Suite 1600  
Houston, TX 77002  
Telephone: (713) 546-5000  
Facsimile: (713) 224-9511  
Email: doug.mcclellan@weil.com

Otis Carroll (TX Bar No. 3895700)  
Deborah Race (TX Bar No. 11648700)  
IRELAND, CARROLL & KELLEY, P.C.  
6101 South Broadway, Suite 500  
Tyler, Texas 75703

Telephone: (903) 561-1600  
Facsimile: (903) 581-1071  
Email: fedserv@ickl.com

**ATTORNEYS FOR DEFENDANT  
AMAZON.COM INC. AND  
YAHOO! INC.**

/s/ Thomas L. Duston (with permission)

Thomas L. Duston  
tduston@marshallip.com  
Anthony S. Gabrielson  
agabrielson@marshallip.com  
Scott A. Sanderson  
ssanderson@marshallip.com  
MARSHALL, GERSTEIN & BORUN LLP  
6300 Willis Tower  
233 South Wacker Drive  
Chicago, IL 60606-6357  
(312) 474-6300

Brian Craft  
bcraft@findlaycraft.com  
Eric H. Findlay  
efindlay@findlaycraft.com  
FINDLAY CRAFT, LLP  
6760 Old Jacksonville Highway, Suite 101  
Tyler, TX 75703  
(903) 534-1100

**ATTORNEYS FOR DEFENDANT  
CDW LLC**

/s/ Christopher M. Joe (with permission)

Christopher M. Joe  
chris.joe@bjciplaw.com  
Eric W. Buether  
eric.buether@bjciplaw.com  
Niky Bukovcan  
niky.bukovcan@bjciplaw.com  
1700 Pacific, Suite 2390  
Dallas, Texas 75201  
Telephone: (214) 466-1272  
Facsimile: (214) 635-1828

**ATTORNEYS FOR DEFENDANT  
J.C. PENNEY CORPORATION, INC.**

*/s/ Mark Matuschak (with permission)*

Joe W. Redden, Jr.  
Michael Ernest Richardson  
BECK REDDEN & SECREST  
1221 McKinney  
Suite 4500  
Houston, TX 77010  
713.951.6284  
jredden@brsfirm.com  
mrichardson@brsfirm.com

Mark G. Matuschak  
Donald R. Steinberg  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
60 State Street  
Boston, MA 02109  
617.526.5000  
mark.matuschak@wilmerhale.com  
don.steinberg@wilmerhale.com

Kate Hutchins  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
399 Park Avenue  
New York, NY 10022  
212.230.8800  
kate.hutchins@wilmerhale.com

Daniel V. Williams  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
1875 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
202.663.6012  
daniel.williams@wilmerhale.com

**ATTORNEYS FOR DEFENDANT  
STAPLES, INC.**

/s/ Neil J. McNabnay (with permission)

Thomas M. Melsheimer (txm@fr.com)

Texas Bar No. 13922550

Neil J. McNabnay (njm@fr.com)

Texas Bar No. 24002583

FISH & RICHARDSON P.C.

1717 Main Street, Suite 5000

Dallas, TX 75201

(214) 747-5070 (Telephone)

(214) 747-2091 (Facsimile)

Proshanto Mukherji

E-mail: pvm@fr.com

FISH & RICHARDSON P.C.

One Marina Park Drive

Boston, MA 02110-1878

617-542-5070 (Telephone)

617-542-8906 (Facsimile)

**ATTORNEYS FOR DEFENDANT  
THE GO DADDY GROUP, INC.**

/s/ M. Scott Fuller (with permission)

Edwin R. DeYoung

Texas Bar No. 05673000

Roy W. Hardin

Texas Bar No. 08968300

Roger Brian Cowie

Texas Bar No. 00783886

M. Scott Fuller

Texas Bar No. 24036607

Galyn Gafford

Texas Bar No. 24040938

LOCKE LORD LLP

2200 Ross Avenue, Suite 2200

Dallas, Texas 75201-6776

Telephone: (214) 740-8000

Facsimile: (214) 740-8800

E-mail: edeyoung@lockelord.com

**ATTORNEYS FOR DEFENDANT  
CITIGROUP INC.**

/s/ David J. Healey (with permission)

David J. Healey

E-mail: Healey@fr.com

FISH & RICHARDSON P.C.  
1 Houston Center  
1221 McKinney Street, Suite 2800  
Houston, TX 77010  
713-654-5300 (Telephone)  
713-652-0109 (Facsimile)

OF COUNSEL:  
Frank E. Scherkenbach  
E-mail: Scherkenbach@fr.com  
FISH & RICHARDSON P.C.  
225 Franklin Street  
Boston, MA 02110-2804  
617-542-5070 (Telephone)  
617-542-8906 (Facsimile)

Joseph P. Reid  
E-mail: Reid@fr.com  
Jason W. Wolff  
E-mail: Wolff@fr.com  
FISH & RICHARDSON P.C.  
12390 El Camino Real  
San Diego, CA 92130  
858-678-5070 (Telephone)  
858-678-5099 (Facsimile)

**ATTORNEYS FOR DEFENDANT  
ADOBE SYSTEMS INCORPORATED**

/s/ Doug E. Lumish (with permission)

Douglas E. Lumish (pro hac vice)  
dlumish@kasowitz.com  
Jeffrey G. Homrig (pro hac vice)  
jhomrig@kasowitz.com  
Jonathan K. Waldrop (pro hac vice)  
jwaldrop@kasowitz.com  
Joseph H. Lee (pro hac vice)  
jlee@kasowitz.com  
Parker C. Ankrum (pro hac vice)  
pankrum@kasowitz.com  
KASOWITZ, BENSON, TORRES &  
FRIEDMAN, LLP  
1360 Peachtree St., N.E., Suite 1150  
Atlanta, GA 30309  
Tel: (404) 260-6080  
Fax: (404) 260-6081

James R. Batchelder (pro hac vice)  
james.batchelder@ropesgray.com  
Sasha G. Rao (pro hac vice)  
sasha.rao@ropesgray.com  
Mark D. Rowland  
mark.rowland@ropesgray.com  
Brandon Stroy (pro hac vice)  
brandon.stroy@ropesgray.com  
Lauren Robinson (pro hac vice)  
lauren.robinson@ropesgray.com  
Rebecca R. Hermes (pro hac vice)  
rebecca.wight@ropesgray.com  
Han Xu (pro hac vice)  
han.xu@ropesgray.com  
ROPES & GRAY LLP  
1900 University Avenue, 6th Floor  
East Palo Alto, California 94303-2284  
Telephone: (650) 617-4000  
Facsimile: (650) 617-4090

Michael E. Jones (Bar No. 10929400)  
mikejones@potterminton.com  
Allen F. Gardner (Bar No. 24043679)  
allengardner@potterminton.com  
POTTER MINTON  
A Professional Corporation  
110 N. College, Suite 500  
Tyler, TX 75702  
Telephone: (903) 597-8311  
Facsimile: (903) 593-0846

**ATTORNEYS FOR DEFENDANTS  
GOOGLE, INC. AND YOUTUBE, LLC**

**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 6<sup>th</sup> 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