

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

JURY TRIAL DEMANDED

**ADOBE SYSTEMS INCORPORATED'S MOTION FOR LEAVE TO FILE A  
MOTION *IN LIMINE* TO EXCLUDE EVIDENCE OF EFFORTS TO INITIATE A RE-  
EXAMINATION OF THE '906 PATENT AND MOTION *IN LIMINE***

Adobe Systems Incorporated ("Adobe"), one of the Defendants, moves for leave to file one Motion *in Limine* beyond the limit set by this Court. Adobe needs to file one individual Motion *in Limine* on its own to exclude evidence relating to efforts to persuade the Director of the United States Patent And Trademark Office ("USPTO") to initiate a re-examination of the '906 patent.

Adobe's proposed motion is a discrete issue: It seeks to exclude efforts by Adobe (or its predecessor) corporations (and necessarily others) to have the Director of the U.S. Patent & Trademark Office initiate a re-examination of the '906 patent. Notably, the Motion *in Limine* does not seek to exclude the re-examination or the re-examination record itself. As shown in Adobe's Motion *in Limine*, this issue is irrelevant to any jury issue.

Adobe needs to be able to make this one separate Motion *in Limine* because this evidence does not impact all of the remaining Defendants equally, many Defendants have not prioritized this as a Motion *in Limine*, leaving Adobe to this motion for itself.

The specific facts and law are set forth in the Motion *in Limine*. Among the reasons this motion is unique to Adobe, and leave should be permitted for it to be filed, are as follows:

Adobe's products were involved in the trial of *Eolas v. Microsoft*. Adobe knew about the '906 patent from that litigation, which pre-dates the re-exam. It also means that at the time certain companies were working to have the PTO initiate a re-examination, Adobe had no reason to think it infringed, since products by it and its predecessor companies had been featured in the *Eolas v. Microsoft* trial and were never accused of infringement at that time (or afterward until this suit was filed). If the lobbying effort is permitted to go to the jury, Adobe would have to explain Adobe's concern was the impact on web browsers, especially compatibility with products for designing websites, its own websites, and its FLASH and authoring tool. Further, Adobe and its predecessors pre-date *Eolas*, had relationships with the Regents of the University of California (and do today), and licenses and agreements with the Regents.

Evidence about the past history of the *Microsoft* case is likely relevant to estoppel or laches issues for Adobe, but these are equitable issues to be tried to the Court, and the evidence is of no relevance in the jury trial. Since Adobe is uniquely situated in the volume of material and past relationships, Adobe has a unique interest in excluding this evidence, and moves to file its own Motion *in Limine* on the topic.

Adobe asks that the Court grant its motion for leave to file this Motion *in Limine*.

Dated: January 6, 2012

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ David J. Healey

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

Proshanto Mukherji

Email: Mukherji@fr.com

**FISH & RICHARDSON P.C.**

One Marina Park Drive

Boston, MA 02110-1878

(617) 542-5070 (Telephone)

(617) 542-8906 (Facsimile)

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)

Counsel for Defendant

ADOBE SYSTEMS INCORPORATED

**CERTIFICATE OF CONFERENCE**

I certify that I met and conferred with counsel for Plaintiff on January 5, 2012, and that the motion is opposed.

*/s/ David J. Healey* \_\_\_\_\_

David J. Healey

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on January 6, 2012, on all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

*/s/ David J. Healey* \_\_\_\_\_

David J. Healey