

EXHIBIT A

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

EOLAS TECHNOLOGIES, INC.,)	Civil Action No. 6:09-cv-446
)	
Plaintiff,)	
)	HIGHLY CONFIDENTIAL –
vs.)	ATTORNEY’S EYES ONLY
)	
ADOBE SYSTEMS INC., et al.,)	
)	
Defendants.)	
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**EXPERT REPORT OF ROY WEINSTEIN
CORE REPORT**

66. Eolas and Microsoft entered into a Confidential Settlement Agreement on August 17, 2007 dismissing the patent infringement action brought by Eolas against Microsoft under the ‘906 patent.¹⁰⁸ They also entered into a License Agreement on the same date.¹⁰⁹ Under the License Agreement, Eolas granted Microsoft a non-exclusive, irrevocable, perpetual, non-transferable, fully paid-up, royalty-free, world-wide license under U.S. Patent Application Serial No. 08/324,443, any applications claiming priority thereto, and any patents issued from these applications, including the ‘906 patent and any reissues, reexaminations, registrations, renewals, and extensions thereof. Licensed products include any Microsoft or Microsoft affiliate software product, software development tool, service, publication, or Web content marketed and licensed using in commerce a trademark owned by Microsoft or a Microsoft affiliate. Microsoft did not obtain a right to grant sublicenses to third parties (other than Microsoft affiliates). Microsoft agreed to take all steps necessary to ensure that an adverse judgment against Microsoft would issue in the interference declared between the ‘906 patent and a patent assigned to Microsoft.¹¹⁰ Microsoft further agreed to pay \$175 million in consideration of the settlement and license, of which \$30,437,500 was allocated to the University of California.

B. Creation of W3C Patent Advisory Group

67. On September 23, 2003, approximately one month after a jury found that Microsoft infringed the ‘906 patent, World Wide Web Consortium (“W3C”), the global standard-setting body for the Web, launched a Patent Advisory Group to discuss issues arising

108. Confidential Settlement Agreement between Eolas Technologies Incorporated and Microsoft Corporation, August 17, 2007.

109. License Agreement between Eolas Technologies Incorporated and Microsoft Corporation, August 17, 2007.

110. Settlement Agreement between The Regents of the University of California and Microsoft Corporation, August 17, 2007.

from the ‘906 patent.¹¹¹ W3C had previously invited its members as well as other key commercial and open source software interests to attend an ad hoc meeting, hosted by Macromedia, to begin to evaluate potential near-term changes that might be implemented in browsers, authoring tools, and Web sites as a result of the case involving Microsoft.¹¹² Participants in the Patent Advisory Group included representatives from Nokia, Opera, Corel, AOL, Microsoft, Oracle, Adobe, RealNetworks, and Sun Microsystems.¹¹³

68. According to its charter, creation of the Patent Advisory Group was triggered by “discovery of specific patent claims likely to be essential that are not available on [royalty free] terms.”¹¹⁴ The stated mission of the Patent Advisory Group is “to study issues for HTML-related Working Drafts and Recommendations raised by the court case of Eolas v. Microsoft and US Patent 5,838,906.”¹¹⁵ Specifically, the Patent Advisory Group was directed to “advise the W3C Director on the probability that the above patent claims will in practice result in a requirement that implementers of HTML take licenses from Eolas” and “attempt to resolve concerns raised by the claims in the subject patent.”¹¹⁶

69. The Patent Advisory Group held at least nine meetings from October 2003 to January 2004. The final meeting occurred on January 30, 2004. At that final meeting, the participants decided that the group “has completed its work for now, and that its charter has

111. HTML Patent Advisory Group Charter, W3C.

112. HTML Patent Advisory Group Charter, W3C.

113. “HTML Patent Advisory Group (PAG) Public Home Page,” W3C website (www.w3.org/2003/09/pag) viewed March 31, 2011.

114. HTML Patent Advisory Group Charter, W3C.

115. HTML Patent Advisory Group Charter, W3C.

116. HTML Patent Advisory Group Charter, W3C.

I note that each of the Defendants in this matter is an implementer of HTML.

expired.”¹¹⁷ I am not aware of any changes to the HTML standard that were made as a result of the work of the Patent Advisory Group or the ‘906 patent.¹¹⁸

C. Director Initiated Reexamination of the ‘906 Patent

70. Acting on the advice of the Patent Advisory Group, W3C urged the Director of the USPTO to initiate a reexamination of the ‘906 patent.¹¹⁹ According to an October 28, 2003 letter from the Director of W3C to the Director of the USPTO,

The practical impact of withholding unrestricted access to the patented technology from use by the Web community will be to substantially impair the usability of the Web for hundreds of millions of individuals in the United States and around the world. The object embedding technology supposedly covered by the ‘906 patent provides critical flexibility to Web browsers giving users seamless access to important features that extend the capabilities of Web browsers. Nearly every Web user relies on plug-in applications that add services such as streaming audio and video, advanced graphics and a variety of special purpose tools.¹²⁰

The Director of W3C further noted that “changes forced by the ‘906 patent will also have a **permanent impact on millions of Web pages that may have historical importance** [emphasis original]” and “[t]he ‘906 patent will cause cascades of incompatibility to ripple through the Web.”¹²¹

71. Adobe, America Online, Inc., Macromedia, Inc., and Microsoft also urged the Director of the USPTO to exercise his authority to initiate a Director Ordered Reexamination

117. Summary of 30 January 2004 HTML PAG teleconference, March 22, 2004.

118. Summary of 5 December 2003 HTML PAG teleconference, December 19, 2003.

119. “W3C Requests ‘906 Patent Re-Examination,” W3C press release, October 29, 2003.

120. Letter from Tim Berners-Lee to Hon. James E. Rogan, October 28, 2003 (EOLASTX-0000013755-760 at 757).

121. Letter from Tim Berners-Lee to Hon. James E. Rogan, October 28, 2003 (EOLASTX-0000013755-760 at 757 and 759).

of the ‘906 patent in October 2003.¹²² According to Adobe, the ‘906 patent “has been the subject of widespread concern within the industry to which it pertains.”¹²³ Additionally, Adobe asserted that “significant concerns have been expressed within the broader community of owners and users of websites on the Internet regarding changes that would have to be implemented in Web browsers to avoid infringing the [‘906] patent.”¹²⁴

72. Director initiated reexaminations are rare; they account for only two percent of all reexaminations according to the USPTO.¹²⁵ Nevertheless, on October 30, 2003, the Director of the USPTO ordered a reexamination of the ‘906 patent, claiming “a substantial outcry from a widespread segment of the affected industry has essentially raised a question of patentability with respect to the ‘906 patent claims.”¹²⁶

73. The patentability of Claims 1 through 10 of the ‘906 patent ultimately was confirmed during the first reexamination, and the USPTO issued an Ex Parte Reexamination Certificate on June 6, 2006.¹²⁷

D. December 2005 Microsoft Initiated Reexamination of the ‘906 Patent

74. In December 2005, Klarquist Sparkman LLP (“Klarquist”), a law firm acting on behalf of Microsoft, asked the USPTO to initiate another reexamination of the ‘906

122. Letter from MeMe Jacobs Rasmussen to Hon. Steven Kunin, October 15, 2003 (EOLASTX-0000000838-839).
Letter from James Bramson, Loren Hillberg, and Andrew Culbert to Commissioner for Patents, October 14, 2003 (EOLASTX-0000000824-837).

123. Letter from MeMe Jacobs Rasmussen to Hon. Steven Kunin, October 15, 2003 (EOLASTX-0000000838-839 at 838).

124. Letter from MeMe Jacobs Rasmussen to Hon. Steven Kunin, October 15, 2003 (EOLASTX-0000000838-839 at 838).

125. Hicks, Matthew, “Eolas Remains Confident in Face of Patent Re-examination,” *ExtremeTech*, November 12, 2003.

126. Director Initiated Order for Reexamination, October 30, 2003 (EOLASTX-0000002945-953 at 946).

127. Ex Parte Reexamination Certificate, U.S. Patent No. 5,838,906, June 6, 2006.