EXHIBIT D

Page 1

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE EASTERN DISTRICT OF TEXAS

3   TYLER DIVISION

4   ---o0o---

5

6   EOLAS TECHNOLOGIES   )

    INCORPORATED,   )

7   )

          Plaintiff,   )

8   )

     vs.   )   No. 6:09-CV-446

9   )

    ADOBE SYSTEMS, INC.;   )

10 AMAZON.COM, INC.; APPLE, INC.;)

    BLOCKBUSTER, INC.; eBAY, INC.;)

11 FRITO-LAY, INC.; THE GODADDY   )

    GROUP, INC.; GOOGLE, INC.;   )

12 J.C. PENNEY COMPANY, INC., et   )

    al.,   )

13   )

          Defendants.   )

14 _____)

15

16

17

18   CONFIDENTIAL TESTIMONY - ATTORNEYS' EYES ONLY

19   VIDEOTAPED DEPOSITION OF DANIEL RAYMOND SADOWSKI

20   Redwood City, California

21   Tuesday, August 9, 2011

22

23

24

25 Job No. 40991

Page 46

1   Q   What percentage of your income for this   9:53AM
2 year, 2011, is based on the work that you have been
3 doing for counsel?
4   A   I'm doing some computations. 30 percent
5 as a guess.   9:54AM
6   Q   Do you have income from other consulting?
7   A   Yes.
8   Q   What other consulting projects are you
9 working on?
10   A   I've done some confidential work for other   9:54AM
11 clients. I can't describe it in detail, but it
12 involves multimedia.
13   Q   Are you working on any other patent cases?
14   A   I am not working on any patent case.
15   Q   Are you doing any other legal work?   9:54AM
16   A   I am doing no other legal work.
17   Q   So in the declaration you have in front of
18 you in Exhibit 1, you set forth a few examples of
19 MacroMind working within HyperCard; is that right?
20   A   Yes.   9:55AM
21   Q   And do you know who developed HyperCard?
22   A   Yes, I do.
23   Q   Who?
24   A   I'm sorry, what was that?
25   Q   Who?   9:55AM

Page 47

1   A   It was developed by Apple Computer,   9:55AM
2 primarily by an engineer called Bill Atkinson.
3   Q   Do you know Mr. Atkinson?
4   A   I've met him a couple of times, but that's
5 all.   9:55AM
6   Q   So it's your understanding that
7 Mr. Atkinson was the primary developer of HyperCard?
8   A   Yes.
9   Q   And you'd consider him knowledgeable about
10 how HyperCard works?   9:56AM
11   MR. WOLFF: Objection.
12   THE WITNESS: I don't have any way of
13 judging that.
14 BY MR. BUDWIN:
15   Q   He created it.   9:56AM
16   A   Correct.
17   Q   So would you consider the man,
18 Mr. Atkinson, who created HyperCard to be
19 knowledgeable about how it works?
20   MR. WOLFF: Objection.   9:56AM
21   THE WITNESS: I would consider him to be
22 how it worked when he created it, but I believe it
23 was changed since he created it. I don't know how.
24 I don't know if it works exactly the same way.
25   So I don't know if he's up to date on it   9:56AM

Page 48

1 or not. I have no way of knowing.   9:56AM
2 BY MR. BUDWIN:
3   Q   Who is more knowledgeable about the
4 operation of HyperCard, you or Mr. Atkinson?
5   A   I don't know the answer to that.   9:56AM
6   Q   So it's your understanding that HyperCard
7 was developed by Apple Computer?
8   A   Yes.
9   Q   Did you know that Apple, like Macromedia,
10 was involved in requesting a reexam of Eolas'   9:56AM
11 patents?
12   A   I did not know that.
13   Q   Do you have any understanding of why
14 neither Apple, nor Macromedia, submitted HyperCard
15 or MacroMind as prior art to the Patent Office in   9:57AM
16 the reexams that they requested?
17   MR. WOLFF: Object to form.
18   THE WITNESS: I know nothing about that.
19 BY MR. BUDWIN:
20   Q   Did you know that Apple was initially a   9:57AM
21 Defendant in this case?
22   A   I'd say yes.
23   Q   Did you talk to any counsel that you
24 knew -- or that was representing Apple?
25   A   No. I saw it in a newspaper. They listed   9:57AM

Page 49

1 many companies and I noticed Apple was in there.   9:57AM
2   Q   Do you have an understanding as to whether
3 Apple has now been dismissed from the case?
4   A   No, I don't know anything about that.
5   Q   If the HyperCard, which you said Apple   9:58AM
6 developed, and the MegaMind -- I just want to call
7 it MegaMind. Let's try it again.
8   If the HyperCard, which you said Apple
9 developed, and the MacroMind Player were known and
10 used in the early 1990s, why is it that Apple would   9:58AM
11 be dismissed from the case and not go to court and
12 use this as art -- prior art?
13   MR. WOLFF: Object to form.
14   THE WITNESS: I don't really know anything
15 about the patent case or why people would do stuff.   9:58AM
16 BY MR. BUDWIN:
17   Q   Apple would be knowledgeable about the
18 operation of HyperCard, correct?
19   A   Yeah, I would expect so, yes.
20   Q   And yet even though they were initially a   9:58AM
21 Defendant, they have now been dismissed?
22   MR. WOLFF: Objection. Is that a
23 question?
24 BY MR. BUDWIN:
25   Q   Even though they were initially a   9:58AM

1 Defendant, they have now been dismissed and you   9:58AM
2 don't know why?
3   A I do not know why, no.
4   Q You don't know why they would be dismissed
5 if this HyperCard that they know all about was prior   9:59AM
6 art or good prior art to the patent? You don't know
7 anything about that?
8   A No, I don't --
9   MR. WOLFF: Objection.
10   THE WITNESS: -- no.   9:59AM
11 BY MR. BUDWIN:
12   Q Have you ever heard of something called
13 the Mosaic web browser?
14   A Yes, I have.
15   Q But you never used Mosaic?   9:59AM
16   A I never used Mosaic.
17   Q Are you aware of any uses of Director,
18 Shockwave, MacroMind, or Flash in Mosaic?
19   A No, I'm not.
20   Q You never worked on any such project?   9:59AM
21   A No, I did not.
22   Q So as we talked about earlier, the first
23 use of Shockwave Player within a web browser which
24 you are aware is Netscape, June 5th, 1995?
25   A Yes, the first public use.   10:00AM

1   Q In 1993 to 1994, would you consider   10:00AM
2 yourself to be a person of ordinary skill in the art
3 as it relates to the subject matter of your
4 declaration?
5   MR. WOLFF: Objection.   10:00AM
6   THE WITNESS: I'm thinking about that,
7 because that's a new phrase which I'm not familiar
8 with.
9   So a person of ordinary skill. I would
10 have to say I would be a person of extraordinary   10:00AM
11 skill.
12 BY MR. BUDWIN:
13   Q It's because you are a computer scientist
14 by education?
15   A Correct.   10:00AM
16   Q And you had been working for Macromedia
17 since at least 1991?
18   A Yes.
19   Q And you were familiar with the use and
20 operation of HyperCard?   10:01AM
21   A Yes.
22   Q And you were familiar with the use and
23 operation of MacroMind Player?
24   A Yes.
25   Q And you were also familiar with the use   10:01AM

1 and operation of Netscape Navigator?   10:01AM
2   A Not particularly. I know I used it,
3 but --
4   Q You had used Netscape Navigator?
5   A Yes.   10:01AM
6   Q And despite your familiarity with
7 HyperCard and the MacroMind Player and Shockwave and
8 Netscape, the first time that you're aware of that
9 those -- that Director was used within a web browser
10 was June 5th, 1995, with the public release of the   10:01AM
11 Shockwave Player?
12   A Yes.
13   Q And you can't recall the date or any date
14 prior to June 5th, 1995 when you thought about
15 putting a Director player or MacroMind Player or   10:02AM
16 Shockwave Player within a web browser?
17   A No, no, I don't have the information about
18 that.
19   Q Do you recall having such a thought?
20   MR. WOLFF: Objection.   10:02AM
21   THE WITNESS: I would say not the way that
22 it's phrased, no.
23 BY MR. BUDWIN:
24   Q Now, HyperCard was something that worked
25 solely on the Macintosh; is that right?   10:02AM

1   A Yes, that's correct.   10:02AM
2   Q And you said you had never previously
3 heard of something called -- strike that.
4   You said that prior to your work in this
5 lawsuit, you had never heard of something called   10:03AM
6 Viola?
7   A I don't believe I have.
8   Q Do you have any understanding as to
9 whether Viola works solely on UNIX?
10   A I believe it does, but I don't know for   10:03AM
11 sure.
12   Q Is it easy to combine something that works
13 solely on a Macintosh in 1994 with something that
14 works solely on UNIX in 1994?
15   A Is it easy --   10:03AM
16   MR. WOLFF: Objection.
17   THE WITNESS: Is it easy to combine them.
18 I guess I'm not sure exactly what you're asking.
19 BY MR. BUDWIN:
20   Q Can you take a program like Viola that   10:03AM
21 runs solely on UNIX in the 1994 timeframe and
22 successfully run it on a Macintosh without changing
23 it?
24   A Oh, no, you could not do that.
25   Q What would be involved in changing a UNIX   10:04AM