

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Eolas Technologies Incorporated,
Plaintiff,
vs.
Adobe Systems Inc., Amazon.com, Inc., Apple Inc., Argosy Publishing, Inc., Blockbuster Inc., CDW Corp., Citigroup Inc., eBay Inc., Frito-Lay, Inc., The Go Daddy Group, Inc., Google Inc., J.C. Penney Company, Inc., JPMorgan Chase & Co., New Frontier Media, Inc., Office Depot, Inc., Perot Systems Corp., Playboy Enterprises International, Inc., Rent-A-Center, Inc., Staples, Inc., Sun Microsystems Inc., Texas Instruments Inc., Yahoo! Inc. and YouTube, LLC,
Defendants.

Civil Action No. 6:09-cv-446

Honorable Judge Leonard E. Davis

JURY TRIAL DEMANDED

DEFENDANT CDW LLC'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' SUGGESTION, ARGUMENT OR EVIDENCE THAT CDW COULD COMPLETELY REMOVE OR DISABLE ACCUSED FEATURES AT MINIMAL COST

The Court should preclude Plaintiff from suggesting, arguing, or presenting evidence that Defendant CDW could remove or disable accused functionality at minimal cost, rather than incur the costs of defending against Plaintiffs' infringement allegations. CDW's motion in limine is directed to arguments anticipated from Plaintiffs that CDW could inexpensively completely remove or disable the accused functionality (as distinct from altering or replacing that functionality with non-infringing alternatives), and that CDW's failure to do so is evidence of the value of the accused features. Plaintiff's have already agreed that CDW's decision to defend

1 CDW initially filed this motion at Docket No. 1192. CDW now files this corrected motion to include a Certificate of Conference that CDW inadvertently omitted in its earlier filing. CDW is also filing a revised Proposed Order.

against their allegations of infringement may not be presented as evidence of the value of the accused features. In light of Plaintiffs' agreement, CDW's decision to challenge Plaintiffs' claims of infringement cannot be advanced as evidence of the value, if any, of the accused features. This motion is not intended to preclude evidence concerning non-infringing alternatives.

CONCLUSION

The Court should grant CDW's Motion in Limine and exclude Plaintiffs' suggestion, argument or evidence that CDW could completely remove or disable accused features at minimal cost.

Dated: January 9, 2012

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP

By: /s/ John R. Labbé

Thomas L. Duston
tduston@marshallip.com

Julianne Hartzell
jhartzell@marshallip.com

John R. Labbé
jlabbe@marshallip.com

Scott A. Sanderson
ssanderson@marshallip.com

6300 Willis Tower
233 South Wacker Drive
Chicago, IL 60606-6357
Telephone: (312) 474-6300
Facsimile: (312) 474-0448

Brian Craft
bcraft@findlaycraft.com
Eric H. Findlay
efindlay@findlaycraft.com

FINDLAY CRAFT, LLP
6760 Old Jacksonville Highway, Suite 101
Tyler, Texas 75703
Telephone: (903) 534-1100

**Attorneys for Defendant
CDW LLC**

CERTIFICATE OF CONFERENCE

I hereby certify that the parties met and conferred regarding the relief requested in this Motion in Limine on January 4, 2012 and thereafter in follow-up email correspondence. The parties were unable to reach a resolution as to the relief requested in this motion in limine.

/s/ John R. Labbé

John R. Labbé

CERTIFICATE OF SERVICE

I, John R. Labbé, an attorney, hereby certify that I caused a copy of the foregoing DEFENDANT CDW LLC'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' SUGGESTION, ARGUMENT OR EVIDENCE THAT CDW COULD COMPLETELY REMOVE OR DISABLE ACCUSED FEATURES AT MINIMAL COST to be served on all counsel of record via electronic mail via the Court's ECF system.

/s/ John R. Labbé

John R. Labbé