

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

EOLAS TECHNOLOGIES
INCORPORATED,

Plaintiff,

vs.

Civil Action No.

ADOBE SYSTEMS INC., et al.,

6:09-CV-00446-LED

Defendants.

_____ /

VIDEOTAPED DEPOSITION OF RICHARD PHILLIPS, Ph.D., P.E.
VOLUME I ~ PAGES 1 - 272
PALO ALTO, CALIFORNIA
FRIDAY, JANUARY 6, 2012

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR
CSR LICENSE NO. 9830
JOB NO. 45132

Page 226

1 "On May 31st, 1993, Wei e-mailed the two 17:30
 2 engineers from Sun a link to a 'well-known' ftp site." 17:30
 3 Do you see that? 17:30
 4 A Yes, I do. 17:30
 5 Q Okay. Do you have in your possession any 17:30
 6 Viola browser code dated May 31st of 1993? 17:30
 7 A I don't know. I'd have to go through that 17:30
 8 exercise all over again. 17:31
 9 Q Do you discuss in your report or the exhibits 17:31
 10 to your report an analysis of any Viola browser code 17:31
 11 that's dated May 31st of 1993? 17:31
 12 A I don't know. I'd have to go through the 17:31
 13 details. 17:31
 14 Q All right. 17:31
 15 Please do whatever you need to to answer my 17:31
 16 question. 17:31
 17 A I don't see any. 17:33
 18 Q What evidence do you have that the ftp site 17:33
 19 that you refer to for the May 31st, 1993, Viola code 17:33
 20 was "well known"? 17:33
 21 A Just that Pei Wei notified people as to where 17:33
 22 it was. 17:33
 23 Q So other than the fact that Pei Wei sent an 17:33
 24 e-mail to the Sun engineers with respect to the URL 17:34
 25 for the ftp site, you're not aware of any other 17:34

Page 228

1 Q Sure. 17:48
 2 A Would you please repeat. 17:48
 3 Q Dr. Phillips, do you contend that the 1993 17:48
 4 version of Adobe Acrobat anticipates any claim of 17:48
 5 either the '906 or the '985 patent? 17:48
 6 MR. WOLFF: Object to form. 17:48
 7 THE WITNESS: Yeah, I -- I would have to look 17:48
 8 at my report on that. 17:48
 9 This damn thing is shutting down all by 17:48
 10 itself. 17:48
 11 MR. BUDWIN: Q. Can you look at the paper 17:48
 12 copy of your report, Exhibit 10, please. 17:48
 13 A That's the invalidity report. You -- 17:48
 14 MR. WOLFF: 262. That's the right one. All 17:48
 15 right. 17:48
 16 MR. BUDWIN: Q. Do you have Exhibit 10, 17:48
 17 Dr. Phillips? 17:48
 18 A I do, yes, uh-huh. 17:48
 19 Q Can you turn to page 225. Are you there? 17:48
 20 A I'm there. 17:49
 21 Q Okay. And you say -- the section heading 17:49
 22 there is: 17:49
 23 "Mosaic in combination with Adobe pdf-related 17:49
 24 postings to WW-talk." 17:49
 25 Do you see that? 17:49

Page 227

1 evidence that the ftp site was "well known"? 17:34
 2 A No. 17:34
 3 Q I think maybe we're at a good place to take a 17:34
 4 break because I think I'm going to shift to some 17:34
 5 infringement-related questions. 17:34
 6 MR. WOLFF: Okay. What's the elapsed time? 17:34
 7 THE VIDEOGRAPHER: Just give me one second. 17:34
 8 This marks the end of disc No. 4 in the 17:34
 9 deposition of Richard Phillips. 17:34
 10 The time is 5:35 p.m., and we are off the 17:34
 11 record. 17:34
 12 (Recess taken.) 17:34
 13 THE VIDEOGRAPHER: This marks the beginning 17:47
 14 of disc No. 5 in the deposition of Richard Phillips. 17:47
 15 The time is 5:48 p.m., and we are back on the 17:47
 16 record. 17:47
 17 MR. BUDWIN: Q. Dr. Phillips, it's true, 17:47
 18 isn't it, that the first time that you heard of Pei 17:47
 19 Wei or Viola was after you were engaged in this case? 17:47
 20 A Yes, that's right. 17:47
 21 Q Dr. Phillips, do you contend that the 1993 17:47
 22 version of Adobe Acrobat anticipates any claim of 17:47
 23 either the '906 or the '985 patent? 17:47
 24 A I'm sorry. I was distracted. There was 17:48
 25 something happening. 17:48

Page 229

1 A Yes. 17:49
 2 Q Okay. Do you contend that the 1993 Adobe 17:49
 3 Acrobat by itself anticipates any claim of either the 17:49
 4 '906 or the '985 patent? 17:49
 5 A Give me a moment to refresh my memory here. 17:49
 6 Not itself. 17:50
 7 Q So you agree with me, don't you, 17:50
 8 Dr. Phillips, that you do not contend the 1993 Adobe 17:50
 9 Acrobat by itself anticipates any claim of either the 17:50
 10 '906 or the '985 patents? 17:50
 11 A "By itself," you said? 17:50
 12 Q By itself. 17:50
 13 A It does not. 17:50
 14 Q Dr. Phillips, have you met any of the 17:50
 15 inventors of either the '906 or the '985 patent? 17:50
 16 A No, I have not. 17:51
 17 Q Do you have a positive or a negative 17:51
 18 impression of the inventors of the '906 and the 17:51
 19 '985 patent? 17:51
 20 A I have no impression of them. 17:51
 21 Q Do you believe that the research they did 17:51
 22 that led to the filing of the patent -- the 17:51
 23 '906 patent was new and novel? 17:51
 24 A No, I don't. 17:51
 25 Q Do you have any opinion of Eolas as a 17:51

Page 230

1 company? 17:51

2 A I know almost nothing about -- no, I have no 17:51

3 opinion. 17:51

4 Q Now, you understand, don't you, that the 17:51

5 patents, the '906 and the '985 patent, were filed by 17:51

6 the University of California? 17:51

7 A Yes. 17:51

8 Q Okay. In your experience, is the University 17:51

9 of California in the business of filing bad patents? 17:51

10 MR. WOLFF: Object to form. 17:51

11 THE WITNESS: I have absolutely no way of 17:51

12 judging that. 17:51

13 MR. BUDWIN: Q. What's your opinion of the 17:51

14 University of California? 17:51

15 A As a former academic, my only opinion is 17:51

16 based upon the academic excellence, and the University 17:52

17 of California is known for that. 17:52

18 Q So you agree that the University of 17:52

19 California is known for academic excellence? 17:52

20 A And research. 17:52

21 Q And you agree that the University of 17:52

22 California is well known for its research? 17:52

23 A I do. 17:52

24 Q Do you have an understanding that the 17:52

25 University of California is the largest research -- 17:52

Page 232

1 we are back on the record. 17:53

2 MR. BUDWIN: Q. Do you have that report, 17:53

3 Dr. Phillips? 17:53

4 A I'm almost there. 17:53

5 Q Okay. 17:54

6 A It's a spinning dot. Sorry. 17:54

7 Q Do you have the report available to you, 17:54

8 Dr. Phillips? 17:54

9 A I'm sorry. I'm getting some error messages 17:54

10 here. 17:54

11 MR. BUDWIN: All right. Let's go off the 17:54

12 record. 17:54

13 THE VIDEOGRAPHER: The time is -- 17:54

14 MR. WOLFF: It's up. 17:54

15 THE WITNESS: It's up. It's up. Okay. 17:54

16 MR. BUDWIN: Okay. We can stay on. All 17:54

17 right. 17:54

18 Q Do you have your expert report of 17:54

19 non-infringement, November 15th, 2011? 17:54

20 A Yes. 17:55

21 Q In your expert report on non-infringement, 17:55

22 you discuss something called the document object 17:55

23 model? 17:55

24 A That's right. Yes, I do. 17:55

25 Q And that's sometimes referred to as the DOM? 17:55

Page 231

1 public research institution in the country? 17:52

2 MR. WOLFF: Object to form. 17:52

3 THE WITNESS: I didn't know that. 17:52

4 MR. BUDWIN: Q. Would it surprise you to 17:52

5 hear that? Are you surprised to hear that? 17:52

6 A Oh, yeah. Oh, yes, right. Yes, uh-huh. 17:52

7 Q Are you aware that the University of 17:52

8 California files the most patents of any research 17:52

9 institution in the United States? 17:52

10 A I did not know that. 17:52

11 Q I want to shift gears and I want to talk 17:52

12 about your expert report on non-infringement. Can you 17:52

13 pull that up on your -- your computer. 17:52

14 A Yeah. This thing just rebooted and is asking 17:52

15 for a password. 17:53

16 MR. BUDWIN: Why don't we take a break. 17:53

17 MR. WOLFF: No, we don't need a break. We 17:53

18 need a password. 17:53

19 THE WITNESS: Just need a password. 17:53

20 MR. BUDWIN: Can we go off the record, 17:53

21 please. 17:53

22 THE VIDEOGRAPHER: The time is 5:54 p.m., and 17:53

23 we are off the record. 17:53

24 (Recess taken.) 17:53

25 THE VIDEOGRAPHER: The time is 5:54 p.m., and 17:53

Page 233

1 A Yeah. Excuse me. 17:55

2 Q Now, it's your opinion, isn't it, 17:55

3 Dr. Phillips, that the DOM cannot be the document or 17:55

4 the file called for by the claims of the 17:55

5 Patents-in-Suit? 17:55

6 A That's my opinion, yes. 17:55

7 Q Can you turn to page 37 of your report. 17:55

8 A I'm there. 17:56

9 Q Okay. And do you see paragraph 105 or -- 17:56

10 sorry -- page 36, paragraph 105? 17:56

11 A Yes, I do. 17:56

12 Q Okay. And that paragraph continues onto 17:56

13 page 37? 17:56

14 A Yes. 17:56

15 Q All right. 17:56

16 On page 37, do you see where you say: 17:56

17 "The hypermedia document" -- in bold and 17:56

18 italics -- "in the claims is a well-defined entity." 17:57

19 Do you see that? 17:57

20 A On 37? 17:57

21 Q Yes, page 37: 17:57

22 "The hypermedia document in the claims is a 17:57

23 well-defined entity." 17:57

24 A Yes, okay. 17:57

25 Q Okay. What -- what do you contend satisfies 17:57