

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

EOLAS TECHNOLOGIES, INC. AND	§	Civil Action No. 6:09-CV-446-LED
THE REGENTS OF THE	§	
UNIVERSITY OF CALIFORNIA	§	
	§	
PLAINTIFFS,	§	
	§	
v.	§	JURY TRIAL DEMANDED
	§	
ADOBE SYSTEMS INC., et al.,	§	
	§	
DEFENDANTS.	§	
	§	

**GOOGLE, INC. AND YOUTUBE, LLC’S MOTION FOR LEAVE FOR ADDITIONAL  
TIME TO SERVE CERTAIN PRE-TRIAL DOCUMENTS**

NOW COME Defendants Google, Inc. and YouTube, LLC (together “Google”) and files this Motion for Leave for Additional Time to Serve Certain Pre-Trial Documents:

As the parties prepare for trial, Google, as well as the other eight Defendants remaining in the case, have attempted to coordinate, both among themselves and with Plaintiffs Eolas Technologies, Inc. and the Regents of the University of California (together, “Eolas”), the filings and exchanges set forth in this Court’s September 15, 2011 Docket Control Order (D.I. 979), and the subsequent amendments thereto. For example, several of the deadlines in that Order have been amended through unopposed motion, and the Defendants also did not oppose Eolas’ motion to expand its number of allowed trial exhibits. Also among the many pre-trial exchanges is that of the parties’ deposition designations, the date for which this Court set for January 5, 2012 (D.I. 1140), responsive to another unopposed motion.

While both Google and the combined Defendants have provided designations to Eolas, despite its best efforts to do so, Google has been unable to successfully coordinate with either the remaining Defendants or with Eolas so as to be able to provide an exchange on behalf of all the Defendants that complies with the 10-hour time limit specified in this Court's August 12, 2011 Standing Order. Google therefore respectfully requests that this Court grant Google leave to serve pared designations on Eolas on Google's own behalf in an amount totaling less than 10 hours of testimony, acknowledging that such service cannot now be completed by the original deadline. In view of this late service, Google understands that Eolas may desire additional time to respond to these submissions, and Google is committed to continuing to work with Eolas in setting reasonable goals and deadlines as the parties approach the start of trial in this case.

**A. Google's Request Regarding Deposition Designations**

As both Google and Eolas acknowledge, the Court's Standing Order of August 12, 2011 provides that "each side is limited to designating no more than 10 hours of deposition testimony for use at trial absent a showing of good cause."

While Google has endeavored to meet this limitation, its efforts have been frustrated by the difficulty in coordinating designations among the eight other Defendants remaining in the case, and by the continuing uncertainty over which Defendants will be tried together. Nonetheless, Google has, in its own right, made consistent efforts to comply with this Court's Standing Order and Docket Control Order.

Specifically, in advance of the January 5, 2012 deadline for service, Google provided its own designations to the remaining Defendants in an effort to facilitate compiling a combined list of designations. On January 5, Defendants originally served a single set of deposition designations on Eolas, containing the individual designations for each Defendant. Additionally, Google served its own designations on Eolas on the same date.

Summing the individual Defendants' designations resulted in a number of hours significantly in excess of this Court's Standing Order. However, this sum included significant amounts of overlapping designations, reflecting the designation of the same witnesses by multiple Defendants. The designations served by Google on January 5 were also in excess of this Court's 10-hour limit.

Following a meet & confer on January 9, 2012 with Eolas at which Eolas represented that it would not necessarily be opposed to a reasonable request for leave to designate additional testimony, Defendants endeavored to consolidate their designations into a single list to figure out how much additional time might be requested. This painstaking and time-intensive exercise proved nearly impossible to coordinate among the Defendants in a manner that would permit Defendants to make a precise estimate of the total number of hours of designated testimony. The parties held an additional meet and confer on January 11, 2012, after which Defendants were able to report that result of their consolidation was an estimate that, while significantly below Eolas' original estimate, was still in excess of this Court's 10-hour limit. Efforts to reduce this collective number further have proved unsuccessful as Defendants have not collectively been able to agree on which designations should be eliminated.

Concurrently with Defendants' effort to consolidate, in view of its increasing concern of the Defendants' inability to coordinate their consolidation and reduction of designations, Google worked independently to reduce the amount of its own designations, and intends to provide Eolas with revised designations in an amount below this Court's 10-hour limit. Google also continues to work with the remaining Defendants on reducing their consolidated designations to an amount that would be acceptable to Eolas, but Google cannot be sure when such a reduction, on behalf of *all* Defendants can be completed.

Google's effort in this regard is consistent with a long pattern of communications in which it has attempted to narrow the issues in the case – thereby also reducing the amount of deposition designations required. These efforts began at least as early as November 1, 2011, when counsel for Google contacted counsel for Eolas seeking a reduction in the number of accused products. (Jones Decl. Ex. 1)<sup>1</sup>. Numerous communications followed, but Google did not receive any indication of Eolas' agreement until January 14, 2012, nine days after the parties' deposition designations were to be served.

Unable, despite its best efforts, to choreograph the reduction in designations of all the Defendants or agree with Eolas on narrowing the issues in the case, and unwilling to perpetuate its non-compliance with this Court's Standing Order, Google now seeks leave of this Court to provide Eolas, no later than January 17, 2012 with deposition designations for Google and YouTube only, with such designations having been trimmed below this Court's 10-hour limit. While all of the designations that Google now seeks to provide were included in the original designations provided by the Defendants, Google remains willing to work with Eolas to the extent Eolas desires additional time to provide its responsive objections and counter-designations. To this end, Google suggests that Eolas' objections and counter-designations be provided by January 24, 2012, giving Eolas the same one week that had been envisioned by this Court's original Order. (D.I. 1140). Thereafter, Google will provide any objections to Eolas' Counter designations by January 31, 2012.

## **B. Conclusion**

Acknowledging that, despite its best efforts, it has not complied with this Court's Standing Order with respect to the number of hours of deposition designations, Google

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<sup>1</sup> "Jones Decl. Ex. 1" refers to Exhibit 1 of the January 15, 2012 Declaration of Michael E. Jones, filed concurrently herewith in support of this Motion.

respectfully requests that this Court grant Google's Motion for leave to serve revised Google- and YouTube-specific deposition designations in an amount totaling less than 10 hours of testimony on January 17, 2012.

Dated: January 15, 2012

Respectfully submitted,

By: /s/ Douglas E. Lumish, with permission by  
Michael E. Jones

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**ATTORNEYS FOR DEFENDANTS  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on January 15, 2012.

*/s/ Michael E. Jones* \_\_\_\_\_

**CERTIFICATE OF CONFERENCE**

I hereby certify that counsel for Defendants Google, Inc. and YouTube, LLC has met and conferred with counsel for Plaintiff and counsel for Plaintiff has indicated that they are opposed to the relief sought in this motion.

*/s/ Michael E. Jones*