

Pursuant to the Court's Order dated January 10, 2012, Plaintiffs The Regents of the University of California and Eolas Technologies Inc. ("Plaintiffs") submit this pleading showing its approximate damages model. For the most part, Defendants are accused of infringing Plaintiffs patents-in-suit by including videos, product viewers, product sliders, interactive advertising, search suggest, and interactive applications on their web pages. Plaintiffs damages model is based on each Defendants' use of the infringing technology on their own web pages (although some Defendants such as Amazon and J.C. Penney have indicated they intend to attribute the value of their use to Adobe and/or Google, *see e.g.*, Dkt. Nos. 1133).

Plaintiffs employ a similar damages model for all Defendants. Plaintiffs have used the well-recognized Nash Bargaining Solution (NBS) developed by the Nobel Prize winning Princeton economist, Dr. John Nash, to calculate damages. Plaintiffs employ the NBS to measure the incremental benefit experienced by Defendants, measured as Defendants' incremental profits directly attributable to use of the patents-in-suit. This is the approach contemplated by *Georgia-Pacific* Factor 13, *i.e.* the portion of the realizable profit that should be credited to the inventions as distinguished from non-patented elements.

For each Defendant, Plaintiffs identify the revenue generated by the accused products. Based on the Defendants' operating profit margin, Plaintiffs calculate the profit generated by the accused products. Next, Plaintiffs apportion the profit attributable to the inventions disclosed in the patents-in-suit to determine the incremental benefit from the patents-in-suit. In other words, Plaintiffs identify the profit that would not exist but for Plaintiffs' invention. The apportionment factor or uplift due to the invention varies depending on the accused website/feature and is based on discovery provided by Defendants. Using the NBS, Plaintiffs determine the reasonable

royalty damages by sharing the incremental benefits of the patents-in-suit between Plaintiffs and each Defendant.¹

Based on an analysis of the impact of the patents-in-suit on the revenues and profits of each Defendant, past damages based on currently available financial data are as follows: Google /YouTube -- \$176.4 million; Amazon -- \$135.2 million; Yahoo -- \$41.8 million; J.C. Penney -- \$27.7 million; Staples -- \$20.2 million; CDW -- \$14.7 million; Adobe -- \$12.1 million; Go Daddy -- \$3.6 million; Citigroup -- \$6.5 million. Plaintiffs anticipate updating these figures to include damages through time of trial and, accordingly, these figures will increase by approximately fifty percent.

¹ Plaintiffs' damages model also includes a fixed-price component for each Defendant.

Dated: January 16, 2012.

McKool Smith, P.C.

/s/ Mike McKool

Mike McKool

Lead Attorney

Texas State Bar No. 13732100

mmckool@mckoolsmith.com

Douglas Cawley

Texas State Bar No. 04035500

dcawley@mckoolsmith.com

Holly Engelmann

Texas State Bar No. 24040865

hengelmann@mckoolsmith.com

McKool Smith, P.C.

300 Crescent Court, Suite 1500

Dallas, Texas 75201

Telephone: (214) 978-4000

Telecopier: (214) 978-4044

Kevin L. Burgess

Texas State Bar No. 24006927

kburgess@mckoolsmith.com

Josh W. Budwin

Texas State Bar No. 24050347

jbudwin@mckoolsmith.com

Gretchen K. Curran

Texas State Bar No. 24055979

gcurran@mckoolsmith.com

Matthew B. Rappaport

Texas State Bar No. 24070472

mrappaport@mckoolsmith.com

J.R. Johnson

Texas State Bar No. 24070000

jjohnson@mckoolsmith.com

McKool Smith, P.C.

300 West Sixth Street, Suite 1700

Austin, Texas 78701

Telephone: (512) 692-8700

Telecopier: (512) 692-8744

Robert M. Parker
Texas State Bar No. 15498000
rmparker@pbatyler.com
Robert Christopher Bunt
Texas Bar No. 00787165
rcbunt@pbatyler.com
Andrew T. Gorham
Texas State Bar No. 24012715
tgorham@pbatyler.com
PARKER, BUNT & AINSWORTH, P.C.
100 E. Ferguson, Suite 1114
Tyler, Texas 75702
(903) 531-3535
(903) 533-9687- Facsimile
**ATTORNEYS FOR PLAINTIFF
EOLAS TECHNOLOGIES INC.
AND THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic services on January 16, 2012. Local Rule CV-5(a)(3)(A).

/s/ John B. Campbell _____
John B. Campbell