

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

EOLAS TECHNOLOGIES, INC. AND THE
REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Plaintiffs,

v.

ADOBE SYSTEMS INC., ET AL.,

Defendants.

Civil Action No. 6:09-CV-446 LED

JURY TRIAL DEMANDED

**DEFENDANTS' RESPONSE TO PLAINTIFFS' NOTICE OF SUPPLEMENTAL
AUTHORITY [D.I. 1225] TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
OF INVALIDITY UNDER 35 U.S.C. § 102(B) [D.I. 869]**

Plaintiffs' notice does not contain new "authority." It is further argument, predicated on a very narrow deposition question asked by Plaintiffs' counsel of one of Defendants' experts, Dr. Phillips. Defendants' motion for summary judgment is predicated on the simple fact that Plaintiffs accused the prior art – Adobe Acrobat – of infringement.¹ In doing so, Plaintiffs' infringement contentions relied on the "default and expected use" of Acrobat, which indisputably includes a PDF file.² However, Plaintiffs' corporate designee and the first named inventor testified that he believed Acrobat infringed.³ Thus, while irrelevant for the motion, Dr. Phillips agreeing that Acrobat "by itself" – i.e., without a PDF file – does not infringe has no bearing on the motion. What does matter, and what Defendants establish in their motion⁴ and Dr. Phillips shows without contradiction in his expert report,⁵ is that the allegedly infringing Acrobat functionality upon which Plaintiffs rely on in their P. R. 3-1 contentions matches, exactly, the functionality present in Acrobat in June 1993 and which has remain unchanged since.⁶

¹ See D.I. 869 at 2-3; D.I. 869-02 (Ex. 1 – Plaintiffs' P. R. 3-1 infringement contentions for the '906 patent) and D.I. 869-03 (Ex. 2 – Plaintiffs' P. R. 3-1 infringement contentions for the '985 patent).]

² See, e.g., D.I. 869-02 (at least 53 instances of "PDF files" and 50 instances of "default and expected use") and D.I. 869-03 (at least 83 instances of "PDF files" and 100 instances of "default and expected use").

³ See D.I. 869-05 (Michael Doyle deposition testimony).

⁴ See D.I. 869-07 (Robert Wulff Declaration).

⁵ See D.I. 1018-04 (Ex. D – excerpt from 7/20/11 Expert Report on Invalidity)

⁶ See D.I. 869 at 6 (Figs. 1 and 2, showing interactivity from P. R. contentions and 1993 Acrobat).

Dated: January 19, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on January 19, 2011 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Jason W. Wolff _____

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