

**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' MOTION FOR LEAVE TO FILE A BRIEF REGARDING THE TERM
"BROWSER APPLICATION"**

Defendants respectfully move for leave to submit a four page supplemental claim construction brief on the term “browser application.”¹

The term for which construction is sought is “browser application.” Both sides broadly interpreted the term and it appeared there was no dispute over its scope at the outset of the case based on the parties’ Local Patent Rule disclosures. These disclosures do not limit the term to “web browsers.” In Plaintiffs’ expert rebuttal report served on November 15, 2011, which notably does not dispute the plain ordinary meaning identified by Defendants’ expert,² he assigns a nuanced meaning cobbled from the intrinsic record by importing limitations from exemplary embodiments. This is not a “plain ordinary meaning.” The dispute is identified below.

“Browser Application” (All Claims)	
Defendants’ Construction	Plaintiffs’ Construction
a program used to view or browse electronic documents	A client program that presents an interface and processes requests on behalf of a user to display, and traverse hyperlinks within, hypertext and/or hypermedia documents that are located on the Internet or a “web browser”

To avoid the jury deciding this legal issue, and understanding that the particular term in question has a different meaning today than it did when the patent was filed, Defendants ask that the Court resolve the dispute so the jury will not be confused as to the meaning, evidence, and argument about the term.³ Attached as Exhibit 1 is a four page supplemental brief on the meaning of the disputed term along with accompanying exhibits in support of the brief.

¹ See D.I. 1244 at 69, ¶ 3.

² See, e.g., Ex. B at ¶ 48.

³ *O2 Micro Intern. Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008).

Dated: January 26, 2012

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Counsel for Adobe on behalf of all moving defendants contacted plaintiffs' counsel several times between January 23 and 26, 2012 regarding whether this motion would be opposed. Plaintiffs' counsel indicated on the evening of January 26 that the Motion would be opposed.

/s/ Jason W. Wolff

Jason W. Wolff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on January 26, 2012 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
