

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

**EOLAS TECHNOLOGIES, INC.,**

*Plaintiffs,*

**v.**

**ADOBE SYSTEMS INC., ET AL.,**

*Defendants.*

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

**JURY TRIAL DEMANDED**

**DEFENDANTS' BRIEF REGARDING THE TERM "BROWSER APPLICATION"**

The meaning of the term “browser application” is disputed by the parties and their respective experts. To avoid the legal scope of the term being argued to the jury and irrelevant testimony being offered at trial, Defendants request that the Court construe this term.<sup>1</sup>

<b>Defendants’ Construction</b>	<b>Plaintiffs’ Construction</b>
a program used to view or browse electronic documents <sup>2</sup>	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 <sup>3</sup>

The core disputed issue is whether the construction of “browser application” can properly be limited to a “web browser application” (as Plaintiffs contend) or whether it should be construed to also encompass other types of “browser applications” such as those that existed before the World Wide Web was launched in the 1990’s (as Defendants contend).

The term “browser application” is not defined in the patent specification. Neither party offered it for construction because both parties initially offered liability related evidence that did not limit the meaning in any significant way, or in a manner that indicated there was a dispute over the meaning.<sup>4</sup> Recently, to avoid some of defendants’ prior art, Plaintiffs’ liability expert Dr. Martin construed “browser application” in the narrow manner noted above.

The claims broadly refer to a “browser application” without qualification. In fact certain dependent claims show that the browser is not limited to a “web” browser at all.<sup>5</sup>

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<sup>1</sup> *O2 Micro Intern. Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008).

<sup>2</sup> Ex. A, 10/27/2011 Phillips Report at 135, ¶315.

<sup>3</sup> Ex. B, 11/15/2011 Martin Rebuttal Report at 21, ¶48. Plaintiff’s expert alternately defines the term as a “web browser.” *Id.*

<sup>4</sup> Plaintiffs, for instance, offered infringement theories based on browser applications that were not “web browsers” per se, such as the iTunes program; likewise Defendants offered invalidity theories based on prior art that were also not “web browsers,” such as HyperCard and MediaView.

<sup>5</sup> *See, e.g.*, ’985 patent, asserted claims 18, 22, 38, 42, which limit the “text formats” to “HTML tags.” Given that the claimed “text formats” need not be “HTML tags” or even “tags,” the

Importantly, the claims in the original specification filed in 1994 refer to a “hypermedia browser application.”<sup>6</sup> The term “browser application” without qualification was added to the independent claims later.<sup>7</sup> Eventually Plaintiffs removed the qualifier “hypermedia” before “browser application” entirely.<sup>8</sup>

The specification likewise supports a broad construction. The specification use the terms “browser,” “browser program,” “browser software,” “browser client,” “browser application,” and “hypermedia browser,” but not the term “web browser.” The specification states that *examples* of browser programs are the Mosaic and Cello software.<sup>9</sup> The figures provide block diagrams showing a “browser client” but do not limit the browser to a “web” browser. The specification states simply that “browser client 208” “is a process that a user of a client computer 200 invokes in order to access various data objects, such as hypermedia documents, on a network 206.”<sup>10</sup> The specification also uses the term “browser application” in other contexts, such as referencing a “client-based image browser application” that relays information to a “hypermedia browser application.”<sup>11</sup> In short, nothing in the specification justifies limiting the claimed genus of “browser applications” to the species “web browser application.”

Furthermore, neither the claims nor the specification limit the claims to the Web or the Internet, or even a wide-area network. Like the Court’s construction of “text format” and “embed text format,” the construction of client workstation and network server is broad and framed in

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doctrine of claim differentiation weighs heavily against Plaintiffs’ argument to limit the “browser application” to a “web browser application.” The Court’s broad construction of the terms “text formats,” “embed text formats,” “network server,” and “client workstation” compels a similarly broad construction of “browser application.”

<sup>6</sup> See, e.g., D.I. 570-1 at 33 of 190 (claim 2).

<sup>7</sup> See, e.g., D.I. 570-1 at 73 of 190 (claim 1).

<sup>8</sup> See, e.g., D.I. 570-2 at 42 of 94 (claim 2).

<sup>9</sup> ’906 patent, 1:9-13, 10:17-18.

<sup>10</sup> ’906 patent at 9:15-17.

<sup>11</sup> ’906 patent at 11:67-12:8.

terms of information requesters and information providers.<sup>12</sup> FIG. 2 shows two or more computers connected to the same network (e.g. server A 106 is connected to clients 108 and 104), and the specification expressly states that the “object 16” and “file 40 may reside at any of the computers shown in FIG. 2” and that “it is not necessary to traverse long distances via the Internet in order to retrieve the data object.”<sup>13</sup> The specification notes that in FIG. 2 the “Internet 100 may be replaced by any suitable computer network.”<sup>14</sup> The additional imported limitations in Plaintiffs’ proposed construction, such as traversing hyperlinks and limiting the location of the hypermedia document, and even “hypertext” and “hypermedia” are arbitrary and unnecessary.

Additionally, during prosecution of the patents, the USPTO rejected the claims based on prior art that disclosed “browser applications” that were not “web” browser applications, and Plaintiffs did not challenge this interpretation. Writing in the ’906 patent file history, the Examiner, presumed to be a person ordinary skill in the art, found that “at the time of the invention, one of ordinary skill in the art would consider the BookManager READ program of Cohen as a ‘browser application,’ even though it was not a “web” browser application.<sup>15</sup> Plaintiffs did not dispute this finding regarding the Cohen prior art.

There are many other examples of “browsers” in prior art that pre-date the World Wide Web. A 1982 paper regarding hypermedia systems remarks after discussing “browsers” that “A browser-like interface would be attractive in other environments as well.”<sup>16</sup> A 1986 paper

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<sup>12</sup> D.I. 914 at 23 (“the Court construes ‘client workstation’ as a computer system connected to a network that serves the role of an information requester,’ and a ‘network server’ as ‘a computer system that serves the role of an information provider.’”)

<sup>13</sup> ’906 patent at 5:14-23.

<sup>14</sup> ’906 patent at 3:60-63.

<sup>15</sup> D.I. 573-1 at PH\_001\_0000786973, *see also* PH\_001\_0000786972 (“The BookManager READ product can then manage, search, and show the on-line books created by BookManager Build.’ It is noted that this is the same functionality as a browser application.”)

<sup>16</sup> Ex. C, (Meyrowitz82) at 399 [ADBE018751, p353-meyrowitz.pdf].

discussing a hypertext system describes the use of a “browser” to view electronic documents.<sup>17</sup>

Plaintiff University of California has published other papers referring to “browsers” more generically too.<sup>18</sup> Even a 1990 Adobe documents refer to Acrobat Reader as a “browser”<sup>19</sup> and it is undisputed that Acrobat is not a web browser.

Even the inventors testified in effect that a “browser application” is not limited to a “web browser.” First named inventor Michael Doyle testified that his MetaMAP patent<sup>20</sup> was a browser.<sup>21</sup> There is no dispute that MetaMAP was not a web browser. Cheong Ang, also a co-inventor, testified regarding the patent that “[i]t’s not restricted to the web and HTML documents.”<sup>22</sup>

Consequently, the court should reject the Plaintiff’s proposal to limit the claimed “browser application” to a “web browser application” and should construe “browser application” as “a program used to view or browse electronic documents.”

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<sup>17</sup> Ex. D, (Haan92) at 38, 40, 41 [ADBE018751, IRIS Hypermedia.pdf].

<sup>18</sup> Ex. E, (Rowe92) at §1, Fig. 1; Ex. F, (Hindus93) at 384 (“The postcall Browser application...”) and Fig. 3.

<sup>19</sup> D.I. 869-09 at ADTXT0002025 (“a viewer and **browser** will be written that will read IPS [now PDF] files, and render those files on displays”) (emphasis added).

<sup>20</sup> See ’906 patent at 11:58-59, referencing U.S. Patent No. 4,847,604 as the MetaMAP invention.

<sup>21</sup> Ex. G, (8/10/11 Doyle Tr.) at 150:21-22, 151:19-22, 152:7-10; also see Ex. H, (8/11/11 Doyle Tr.) at 443:18-446:5.

<sup>22</sup> Ex. I, (7/21/11 Ang Tr.) at 293:5-20.

Dated: January 26, 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 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* \_\_\_\_\_

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