

EXHIBIT A

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ERIC BINA

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

EOLAS TECHNOLOGIES INCORPORATED,)
Plaintiff,) Case No.
vs.) 6:09-CV-446
ADOBE SYSTEMS, INC.; AMAZON. COM;)
et al.,)
Defendants.)

DEPOSITION OF ERIC BINA
Chicago, Illinois
August 2, 2011

REPORTED BY: Tina Alfaro, RPR, CRR, RMR, CLR

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09:09:15 2 or even year.

09:09:16 3 Q. Okay. And since that time in early 2000

09:09:18 4 when you first received this e-mail, did you read

09:09:23 5 Eolas's patent subsequently?

09:09:25 6 A. Yes.

09:09:25 7 Q. And when did you last read Eolas patents?

09:09:29 8 A. I last looked at them -- not reading them

09:09:34 9 completely, but looking at certain claims in them

09:09:36 10 this morning.

09:09:37 11 Q. And have you ever read Eolas patents

09:09:40 12 completely?

09:09:40 13 A. Yes.

09:09:41 14 Q. When did you last read Eolas patents

09:09:44 15 completely?

09:09:45 16 A. 2010. I don't know the date more

09:09:51 17 specifically than that, like, you know, the month

09:09:53 18 and day.

09:09:54 19 Q. But you know it was 2010 for some certain

09:09:56 20 reason?

09:09:57 21 A. Yes. Yes.

09:09:57 22 Q. How is it that you know it was 2010?

09:09:59 23 A. Because that was when Jason Wolff contacted

09:10:01 24 me about their patent.

09:10:04 25 Q. And Jason Wolff is counsel for Adobe in

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09:10:07 2 this case?

09:10:07 3 A. Yes. Uh-huh.

09:10:08 4 Q. Is Jason Wolff also representing you
09:10:10 5 today?

09:10:11 6 A. Yes.

09:10:12 7 Q. Are you also represented by counsel for
09:10:15 8 Amazon, eBay, and Yahoo today?

09:10:18 9 A. Yes.

09:10:18 10 Q. Are there any other Defendants whose
09:10:21 11 attorneys also represent you?

09:10:22 12 A. No.

09:10:23 13 Q. Are you aware that Jason Wolff also
09:10:29 14 represents Go Daddy in this case?

09:10:31 15 A. I am.

09:10:32 16 Q. So Go Daddy, Adobe, Amazon, eBay, and Yahoo
09:10:38 17 are all Defendants whose attorneys also represent
09:10:41 18 you; is that right?

09:10:42 19 A. I don't know the legal details of how that
09:10:44 20 works. I know that these two attorneys represent
09:10:46 21 me, and if that means that all those companies
09:10:49 22 represent me, then yes, that is the case.

09:10:52 23 Q. Okay. Well, Jennifer Doan and Jason Wolff
09:10:56 24 both represent you; is that right?

09:10:58 25 A. Correct.

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09:38:03 2 aware of Eolas?

09:38:08 3 A. To the best of my knowledge, it was when I
09:38:09 4 read their patent.

09:38:11 5 Q. And this is sometime the 2000 time frame;
09:38:15 6 is that right?

09:38:16 7 MS. DOAN: Objection, form.

09:38:19 8 BY THE WITNESS:

09:38:19 9 A. My earlier guess was that the first time I
09:38:21 10 would have read their patent was in earlier 2000,
09:38:24 11 correct.

09:38:25 12 Q. Let's go back to some of your work starting
09:38:27 13 with Mosaic. Now, you are one of the developers of
09:38:32 14 the Mosaic Web browser; is that right?

09:38:34 15 A. That's correct.

09:38:36 16 Q. And did you develop Mosaic when you were a
09:38:38 17 student at the University of Illinois?

09:38:40 18 A. No.

09:38:41 19 Q. What position did you have when you
09:38:43 20 developed Mosaic?

09:38:47 21 A. My official title. I don't recall my
09:38:56 22 official title. I might have been research
09:39:00 23 engineer, but I don't recall.

09:39:02 24 Q. What is Mosaic if you had to describe it?

09:39:07 25 A. It was a Web browser.

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09:46:27 2 Q. And I know it's a while back, but was this
09:46:30 3 something that maybe you could pin to something else
09:46:32 4 that happened?

09:46:36 5 A. Certainly, if we had documents, because I
09:46:38 6 left NCSA to join a startup company which was
09:46:41 7 Netscape. So if we have, you know, the date of when
09:46:45 8 Netscape was started, it was right around that date
09:46:47 9 that I left NCSA.

09:46:49 10 Q. Okay.

09:46:59 11 MR. BUDWIN: According to Wikipedia, it was
09:47:00 12 founded in 1994. Does that sound right?

09:47:03 13 MR. WOLFF: Netscape or Mosaic?

09:47:03 14 MR. BUDWIN: Netscape.

09:47:03 15 THE WITNESS: It could be correct. I'm leery
09:47:07 16 of Wikipedia information since they have misleading
09:47:10 17 information about me, at least they used to. So I'd
09:47:13 18 prefer if anyone still had any of the press
09:47:19 19 announcements that Netscape sent out or like
09:47:21 20 articles from newspapers that reported on a new
09:47:24 21 company, that sort of stuff. But if we don't have
09:47:27 22 those, I'm willing to grant 1994 sounds like a
09:47:31 23 reasonable year.

09:47:35 24 BY MR. RAPPAPORT:

09:47:35 25 Q. Why did you leave NCSA to go to Netscape?

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09:47:43 2 A. Joining a startup company is like the dream

09:47:46 3 for software developers.

09:47:48 4 Q. And when you were at Netscape, did you

09:47:50 5 continue to develop a browser?

09:47:53 6 A. Yes. We developed a new Web browser

09:47:54 7 there.

09:47:55 8 Q. And was that -- what was the name of that

09:47:58 9 browser?

09:47:59 10 A. It eventually became the Netscape

09:48:01 11 Navigator.

09:48:03 12 Q. And before that what was it called?

09:48:05 13 A. The very first name, Mosaic Communicator, I

09:48:13 14 think.

09:48:13 15 Q. Why was it that you wanted to continue to

09:48:15 16 develop browsers once you left NCSA?

09:48:18 17 A. I wanted to be part of a startup, and Jim

09:48:22 18 Clark wanted to do a startup company to develop Web

09:48:25 19 browsers.

09:48:25 20 Q. Were you one of the co-founders of

09:48:29 21 Netscape?

09:48:29 22 A. Yes.

09:48:30 23 Q. Who else was a co-founder with you?

09:48:32 24 A. I don't know if I have the full list. Many

09:48:36 25 of the people I mentioned already, Mark Andreessen,

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13:47:27 2 different functionality than was in that version
13:47:29 3 that I saw before we started developing the Web
13:47:32 4 browser.

13:47:32 5 Q. That early Viola version that you first
13:47:34 6 saw --

13:47:35 7 A. Correct.

13:47:35 8 Q. -- didn't have in-line images?

13:47:36 9 A. Correct.

13:47:53 10 Q. Do you remember that when you were being
13:47:55 11 questioned by Ms. Doan there were some questions
13:47:58 12 about whether it would have been obvious to
13:47:59 13 implement some of Eolas's invention in light of
13:48:03 14 things that you had heard?

13:48:04 15 A. Yes.

13:48:06 16 Q. Even though you say that it would have been
13:48:09 17 obvious to do some of these things to practice
13:48:11 18 Eolas's invention, you're not aware of any public
13:48:14 19 version of Web browsers that could implement Eolas's
13:48:18 20 invention prior to the end of 1994, are you?

13:48:21 21 MS. DOAN: Objection, form.

13:48:23 22 BY THE WITNESS:

13:48:23 23 A. I am not.

13:48:39 24 Q. Is it true that you later saw browsers
13:48:40 25 after that time implement Eolas's invention?

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14:28:23 2 browsers I didn't know about. So sitting here
14:28:26 3 today, I do not know -- I'm going to go back to the
14:28:36 4 "with certainty" thing -- with certainty that any
14:28:39 5 browser implemented the Eolas invention before 1994.
14:28:43 6 You seem to be taking the inverse of that in a
14:28:49 7 binary true set, which I'm not certain that's
14:28:51 8 helpful, in wanting me to state that's true, and I
14:28:54 9 don't think I can because you want me to be stating
14:28:59 10 that I know that none did, and I can't know a
14:29:02 11 negative like that.

14:29:04 12 Q. Okay. So let me flip it. Can you tell me
14:29:06 13 today sitting here about any browser that was
14:29:09 14 publicly available before the end of 1994 that
14:29:12 15 implemented Eolas's invention?

14:29:14 16 MR. DUSTON: Objection, form.

14:29:16 17 BY THE WITNESS:

14:29:16 18 A. I can't tell you about any browser that I
14:29:18 19 know of that before 1994 I know implemented Eolas's
14:29:22 20 invention.

14:29:24 21 Q. Now, you also mentioned the demo of Mosaic
14:29:26 22 to Ms. Doan again.

14:29:31 23 A. Oh, yes, the video demo. Yes.

14:29:33 24 Q. Do you have any documents regarding this?

14:29:36 25 A. No.