

EXHIBIT 3

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

**EOLAS TECHNOLOGIES
INCORPORATED**

Plaintiff,

v.

ADOBE SYSTEMS INCORPORATED, *et al.*

Defendants.

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

DEFENDANTS' INVALIDITY CONTENTIONS

		corroborates that before the invention by the applicants for the patents-in-suit, the disclosed systems and programming techniques were made in this country by at least BBN Laboratories and were not abandoned, suppressed, or concealed.
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2. Other materials

In addition to the above prior art references, Defendants identify the following patents, printed publications, product literature, and other materials that are pertinent to invalidity of the asserted claims. Defendants may rely on these references as invalidating prior art, evidence of the knowledge of those skilled in the art and/or evidence to support a motivation to combine or modify other prior art. Defendants reserve all rights to supplement or modify these invalidity contentions and to rely on these references to prove invalidity of the asserted claims in a manner consistent with the Federal Rules of Civil Procedure and the Rules of this Court.

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In addition, Defendants incorporate by reference each and every prior art reference of record in the prosecution of the patents-in-suit and any related applications, as well as the prior art discussed in the specification of the patent.

3. Motivation to Combine

The United States Supreme Court has clarified the standard for what types of inventions are patentable. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). In particular, the Supreme Court emphasized that inventions arising from ordinary innovation, ordinary skill, or common sense should not be patentable. *Id.* at 1732, 1738, 1742-1743, 1746. In that regard, a patent claim may be obvious if the combination of elements was obvious to try or there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent's claims. *Id.* In