

EXHIBIT 9

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

Eolas Technologies)	
Incorporated,)	
Plaintiff,)	
)	
VS.)	No. 6:09-CV-00445-LED
)	
Adobe Systems, Inc.,)	
Amazon.com, Inc., Apple,)	
Inc., Blockbuster, Inc.,)	
CDW Corp., Citigroup,)	
Inc., eBay, Inc.,)	
Frito-Lay, Inc., Google,)	
Inc., J.C. Penney Company)	
& Co., JPMorgan Chase &)	
Co., New Frontier Media,)	
Inc., Office Depot, Inc.,)	
Perot Systems Corp.,)	
Playboy Enterprises)	
International, Inc.,)	
Rent-A-Center, Inc.,)	
Staples, Inc., Sun)	
Microsystems, Inc., Texas)	
Instruments, Inc., Yahoo!)	
Inc., and YouTube, LLC,)	
Defendants.)	
)	

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DAVID M. MARTIN
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1 A. My recollection of the dates associated with 02:19:42
2 it were in 1994 or in 1995, or possibly even later. 02:19:53
3 Q. Okay. Are there any versions of the Viola 02:19:58
4 code or browser that you attempted to compile or did 02:20:01
5 compile dated before May 12th, 1993? 02:20:08
6 MR. BURGESS: Objection, form. 02:20:13
7 THE WITNESS: I don't recall attempting 02:20:27
8 to compile a version of Viola that was dated prior to 02:20:28
9 May 12th, 1993. 02:20:33
10 Q. (BY MS. DOAN) And have you now told me about 02:20:35
11 all the versions of the Viola code or the Viola browser 02:20:38
12 that you've analyzed for this case? 02:20:41
13 A. Those are the only versions that I can recall 02:20:43
14 analyzing for this case. My rebuttal report describes 02:20:54
15 all of the analysis that I did with respect to Viola. 02:20:59
16 And so if I've overlooked a version it would have been 02:21:03
17 discussed in my rebuttal report, I think, in fairly 02:21:08
18 clear fashion. 02:21:11
19 Q. Okay. And those five versions are the 02:21:12
20 May 12th, '93 version -- or the -- sorry. Those five 02:21:15
21 versions are dated with code dates of May 12th, '93; 02:21:19
22 May 27th, '93; October 16th, '93; February '94; and 02:21:24
23 March '94. Is that fair? 02:21:29
24 A. Those are the -- the main dates that I 02:21:30
25 associate with each one of those versions, yes. 02:21:35

1 upon for my opinion. It was merely consistent with my 02:47:17
2 opinion. 02:47:24

3 Q. (BY MS. DOAN) So you may not have indeed 02:47:24
4 preserved these pages for which you're telling this 02:47:26
5 jury that the May 12th browser could not parse. Is 02:47:30
6 that fair? 02:47:32

7 MR. BURGESS: Objection, form. 02:47:33

8 THE WITNESS: I don't recall having 02:47:34
9 specifically set aside these pages in order to produce 02:47:35
10 them. And I wouldn't have done that because I was not 02:47:40
11 relying upon them for my opinion. 02:47:42

12 Q. (BY MS. DOAN) Are you aware of any other 02:47:46
13 Viola browsers prior to May 12th, 1993 that could fetch 02:47:53
14 HTML documents over HTTP? 02:47:59

15 A. Could you just repeat, please? 02:48:03

16 Q. Sure. Are you aware of any other earlier 02:48:05
17 versions of Viola browsers prior to May 12th, 1993 that 02:48:08
18 could fetch HTML documents over HTTP? 02:48:13

19 MR. BURGESS: Objection, form. 02:48:18

20 THE WITNESS: I'm not positive about 02:48:21
21 that. Any versions of Viola prior to May 12th were not 02:48:27
22 discussed along those lines in Dr. Phillips' report, 02:48:38
23 and so I didn't investigate such -- such versions. 02:48:41

24 Q. (BY MS. DOAN) Regardless of whether they were 02:48:44
25 discussed in Dr. Phillips' report, you haven't analyzed 02:48:46

1 any Viola browser prior to May 12th, 1993. Is that 02:48:48
2 fair? 02:48:52
3 A. That sounds correct, yes. 02:48:52
4 Q. So you can't tell this jury whether or not 02:48:55
5 they actually could fetch HTML pages over -- over HTTP. 02:48:57
6 Is that fair? 02:49:04
7 A. I do discuss in my report the problems in 02:49:05
8 receiving any file over HTTP in the May 12th and 02:49:20
9 May 27th versions. 02:49:26
10 Q. You do. 02:49:27
11 A. Yes. 02:49:27
12 Q. And I'm talking about now prior to May 12th. 02:49:28
13 And I'm assuming since that's not part of your analysis 02:49:31
14 then you have no opinion as to whether there is a Viola 02:49:33
15 browser prior to May 12th, 1993 that indeed could fetch 02:49:38
16 HTML pages over HTTP. 02:49:42
17 MR. BURGESS: Objection, form. There is 02:49:49
18 no question pending. 02:49:50
19 Q. (BY MS. DOAN) Do you understand my question? 02:49:55
20 A. If you could rephrase it for me, please. 02:49:56
21 Q. Sure. You haven't conducted any type of 02:50:00
22 analysis with respect to any Viola browsers prior to 02:50:05
23 May 12th, 1993, right? 02:50:10
24 A. The earliest Viola code that I analyzed was 02:50:12
25 May 12th, 1993. 02:50:16

1 Q. Sure. And so you don't have an opinion as to 02:50:17
2 whether there's a Viola browser before May 12th, 1993 02:50:19
3 that indeed could fetch HTML pages over HTTP; is that 02:50:23
4 correct? 02:50:34
5 A. One moment. My analysis is that the -- the 02:50:34
6 two closest versions of the Viola browser that were 02:51:20
7 made available in this case, that is, the May 12th and 02:51:24
8 the May 27th, together with the testimony of Pei Wei 02:51:27
9 and Scott Silvey regarding the May 7th demonstration, 02:51:32
10 indicates that the May 7th demonstration was, likewise, 02:51:39
11 not even capable of receiving a hypermedia document 02:51:45
12 from the remote network server. This is in Paragraph 02:51:49
13 158 of my report. 02:51:52
14 MS. DOAN: Objection, nonresponsive. 02:51:54
15 Move to strike. 02:51:55
16 Q. (BY MS. DOAN) My question is different. 02:51:56
17 Prior to -- and the question is, have you 02:51:57
18 conducted any type of analysis of a Viola browser prior 02:51:58
19 to May 12th, 1993? And I believe you answered that you 02:52:02
20 have not. Is that fair? 02:52:06
21 A. That sounds correct. 02:52:07
22 Q. Okay. So I'm assuming that you don't have any 02:52:08
23 opinion with respect to whether there is a Viola 02:52:10
24 browser dated prior to May 12th, 1993 that indeed could 02:52:13
25 fetch HTML documents over HTTP. You just don't have an 02:52:18

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1 opinion one way or the other. Is that fair? 02:52:25

2 MR. BURGESS: Objection, form. 02:52:27

3 THE WITNESS: No, I don't think that's 02:52:28

4 fair. 02:52:29

5 Q. (BY MS. DOAN) What Viola browser code have 02:52:30

6 you analyzed prior to May 12th, 1993? 02:52:32

7 A. I did not say that I have analyzed Viola code 02:52:36

8 base prior to May 12th, 1993. 02:52:40

9 Q. And indeed you have not; is that fair? 02:52:43

10 MR. BURGESS: Objection, form. 02:52:46

11 THE WITNESS: That's correct. 02:52:46

12 Q. (BY MS. DOAN) So it's my understanding, then, 02:52:47

13 you don't have an opinion as to whether there is a 02:52:49

14 Viola browser dated prior to May 12th, 1993 that indeed 02:52:52

15 could fetch HTML pages over HTTP? 02:52:56

16 MR. BURGESS: Objection, form. 02:53:04

17 THE WITNESS: Again, I disagree. This is 02:53:06

18 a topic that I took -- that I take up in Paragraph 158 02:53:08

19 of the report -- 02:53:12

20 Q. (BY MS. DOAN) Right. 02:53:12

21 A. -- with respect to the browser that I know 02:53:12

22 indicates existed, or that testimony indicates existed 02:53:15

23 on May 7th, which is prior to May 12th. 02:53:16

24 Q. And you're telling me that that couldn't fetch 02:53:19

25 documents, right? And my question is exactly the 02:53:20

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1 opposite. Okay? Are we -- are you with me yet? 02:53:23

2 MR. BURGESS: Objection -- objection, 02:53:26

3 form. 02:53:27

4 THE WITNESS: The -- the way you've been 02:53:27

5 phrasing your question it does not appear to me to be 02:53:28

6 exactly the opposite. So maybe we can just try again 02:53:31

7 and we'll agree. 02:53:34

8 Q. (BY MS. DOAN) Sure. Can you tell me of a 02:53:34

9 Viola browser prior to May 12th, 1993 that indeed could 02:53:37

10 fetch HTML pages over HTTP? 02:53:41

11 MR. BURGESS: Objection, form. 02:53:47

12 THE WITNESS: I -- sitting here today, I 02:53:52

13 can't indicate a version of the Viola browser prior to 02:53:54

14 May 12th -- or the May 12th version, for that matter, 02:53:58

15 that could receive HTML documents over HTTP correctly. 02:54:01

16 Q. (BY MS. DOAN) Okay. And the earliest 02:54:14

17 analysis that you've done is with respect to the 02:54:17

18 May 7th Sun demonstration. Is that fair? 02:54:20

19 A. That sounds correct. I don't recall having 02:54:24

20 performed analysis of prior versions of Viola, that's 02:54:29

21 correct. 02:54:34

22 Q. Is it your opinion that the Viola browser 02:54:35

23 could not parse an HTML document in -- the Viola 02:54:49

24 browser dated October 16th, 1993? 02:54:55

25 A. October 16th? 02:55:00

1 Q. Yes, sir. 02:55:22

2 A. It's my recollection that the Viola alpha 02:55:24

3 version of October 16th, 1993 was able to parse and 02:55:48

4 render some HTML documents. 02:55:52

5 Q. And is it fair that you don't have any opinion 02:55:57

6 about any type of Viola browser dated before the Sun 02:56:04

7 demonstration, May 7th, 1993, as to whether there was 02:56:07

8 such a browser that -- Viola browser that would parse 02:56:12

9 HTML documents? Is that fair? 02:56:17

10 MR. BURGESS: Objection, form. 02:56:20

11 THE WITNESS: The earliest browser 02:56:22

12 that -- that I've expressed an opinion on is the May 7, 02:56:24

13 1993 browser -- 02:56:29

14 Q. (BY MS. DOAN) Okay. So you -- 02:56:30

15 A. -- as far as I can recall, unless I'm 02:56:31

16 forgetting something in my report, which I doubt. 02:56:34

17 Q. I'm not trying to trick you. I don't think -- 02:56:35

18 I don't see one or I would show you. I -- we would 02:56:37

19 point it out. Okay? So I just want to make sure 02:56:40

20 there's not something else as you sit here today for 02:56:42

21 which you have an opinion that I haven't explored. I'm 02:56:45

22 trying to do my job. Okay? 02:56:48

23 A. I understand. 02:56:50

24 Q. Okay. So before May 7th, 1993, you don't have 02:56:50

25 any opinion one way or the other as to whether there's 02:56:53

1 a Viola browser that could parse HTML documents. Is 02:56:56
2 that fair? 02:57:00
3 MR. BURGESS: Objection, form. 02:57:01
4 THE WITNESS: I have not offered an 02:57:03
5 opinion about that. I did not set out to -- I did not 02:57:10
6 set out to form an opinion regarding that, and I guess 02:57:14
7 I don't understand you to be asking me to form one now. 02:57:19
8 Q. (BY MS. DOAN) I'm not. I'm just trying to 02:57:22
9 make sure that I'm not going to be surprised at trial. 02:57:24
10 Is that fair? 02:57:27
11 A. I understand, yes. 02:57:27
12 Q. Okay. Now, focusing on the October 16th, 1993 02:57:28
13 Viola browser code, you gave an opinion that it's not 02:57:33
14 prior art with respect to 102(a). Do you remember 02:57:36
15 that? 02:57:39
16 A. The October 16th Viola alpha code, yes. 02:57:41
17 Q. Okay. The October 16th, 1993 alpha code would 02:58:09
18 be prior art under 102(b), would it not? 02:58:14
19 MR. BURGESS: Objection, form. 02:58:21
20 THE WITNESS: I'm not positive. 02:58:32
21 Q. (BY MS. DOAN) You don't have an opinion one 02:58:34
22 way or the other. Is that fair? 02:58:35
23 A. Sitting here today, I can't say whether Viola 02:58:40
24 alpha from October of 1993 qualifies as prior art under 02:59:08
25 102(b). 02:59:13