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' REPLY BRIEF REGARDING THE TERM "BROWSER APPLICATION"

Plaintiffs' have narrowed their construction of the "browser application" as follows:

Defendants' Construction	Plaintiffs' New 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 in the [Internet] World Wide Web.[1]

The "World Wide Web" is a subset of the "Internet" and neither limitation (nor the others which Plaintiffs try to import) from the specification is appropriate.[2,3] In addition to the substantial evidence that runs counter to Plaintiffs' proposed construction, Plaintiffs' approach with respect to "browser" also conflicts with the broad constructions afforded other related terms, such as "hypermedia document," "network server," and "client workstation."

Plaintiffs' attempt to bolster their argument by reliance on other claim language fails. There is no dispute that the claims require a "hypermedia document." But a browser need not be specifically a web browser in order to view a hypermedia document. In addition to the intrinsic evidence, Defendants' extrinsic evidence from the time of filing of the patent—to which Plaintiffs do not respond on the merits[4]—shows that "browser application" had a plain ordinary meaning in the art at the time that was much broader than "web browser." Other contemporaneous dictionaries from the time of the patents' conception and filing also confirm that a "browser" would be understood by those in the field of computer science as "a program

[1] Brackets are a deletion, underlining is an addition.
[2] '906 patent at 5:24-38.
[3] *See, e.g.,* D.I. 581 at 6 (arguing, regarding "embed text format," that "In their brief, Defendants suggest that this term should be limited to the example of the 'special' EMBED tag described in the preferred embodiment. D.Br. at 11. But Defendants point to no clear and unequivocal disavowal of claim scope, and the Federal Circuit has 'repeatedly warned against confining the claims to [preferred] embodiments.'").
[4] Plaintiffs instead object to Defendants' exemplary extrinsic evidence as pre-dating the patent filing. However, Plaintiffs then proceed to cite to extrinsic evidence from long after the filing date of the patents, while ignoring that, even today, their own inventors understand the term "browser application" broadly and that the usage of the term in the 1993-1994 time frame by the Regents themselves is in keeping with Defendants' construction. *See, e.g*., Exs. C, D, and E.

that is designed to facilitate browsing of data or programs by finding the desired data, displaying it in understandable form, and so on."[5] It is not limited to the Internet, the World Wide Web, HTTP or HTML.

To respond briefly to Plaintiffs' other arguments, the Federal Circuit was not asked to and did not construe the term "browser application." The Federal Circuit's discussion is dicta regarding the preferred embodiment and merely indicates the context on which the parties to the prior case focused the appeal. Plaintiffs cite to no evidence that the term "browser application" was construed by the Court or even offered for construction. Second, the intrinsic evidence is exemplary and non-limiting. There is no definition or disclaimer here, rendering Plaintiffs' attempt to cherry pick selected limitations inappropriate.[6] In fact, even the preferred embodiments cited by Plaintiffs do not limit the location of files to the "World Wide Web." Plaintiffs suggest that if the Court did not so limit the claims, the "browser" would not work because it would "not be capable of executing in this manner, or parsing HTML files, if it were not a web browser."[7] But the asserted claims are not limited to HTML files; "HTML" appears only in certain dependent claims, and those claims refer to text formats not the file type.[8]

Finally, Defendants' construction does not nullify the term "browser application." While it is possible many applications in isolation could be considered "browser applications," the claims are read as a whole and contain many other limitations, e.g., "hypermedia document," "text format, embed text format," that practically limit the scope of the claimed browser applications. The phrase "or view" was not intended to expand the scope of the definition.

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[5] *See* Ex. F (1992) at 318 ("a program that is designed to facilitate browsing of data or programs by finding the desired data, displaying it in understandable form, and so on.").
[6] *Phillips v. AWH Corp.*, 415 F.3d 1303 at 1323 (Fed. Cir. 2005).
[7] D.I. 1307 at 2.
[8] *See, e.g.,* '985 patent, claim 3.

Dated: February 3, 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 February 3, 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).

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