

# 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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12:38:20 2 application with an in-line embedded tag?

12:38:24 3 MR. RAPPAPORT: Objection, form.

12:38:25 4 BY THE WITNESS:

12:38:25 5 A. I think it was obvious to do it because it  
12:38:28 6 was -- people who had ordinary skill in that were  
12:38:31 7 talking about doing it. They were in the news group  
12:38:34 8 talking about it.

12:38:35 9 Q. In fact, you had developed or worked on a  
12:38:37 10 creation of that same thing that Eolas claims they  
12:38:41 11 invented in their patent; is that correct?

12:38:42 12 MR. RAPPAPORT: Objection, form.

12:38:45 13 BY MS. DOAN:

12:38:45 14 Q. You can answer.

12:38:47 15 A. I did a demo version of something which I  
12:38:50 16 believe meets all the criteria of their patent, yes.

12:39:03 17 Q. You also mentioned that you were familiar  
12:39:06 18 with the Viola browser; do you remember that?

12:39:08 19 A. Yes.

12:39:22 20 (Bina Exhibit 3 was marked as  
12:39:22 21 requested.)

12:39:23 22 BY MS. DOAN:

12:39:23 23 Q. I'm handing you what's been marked -- what  
12:39:26 24 I've marked as Exhibit No. 3, and it's a document  
12:39:30 25 produced in this litigation from a WWW conference

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12:39:34 2 photo. Have you seen this document?

12:39:38 3 A. Yes.

12:39:38 4 Q. Can you tell us what it is?

12:39:39 5 A. It's pictures of people who attended this  
12:39:42 6 conference in Cambridge.

12:39:43 7 Q. And when was the conference held?

12:39:47 8 A. July 1993.

12:39:48 9 Q. And were you there?

12:39:49 10 A. Yes.

12:39:50 11 Q. And you also see that a Mr. Pei Wei was  
12:39:53 12 also there?

12:39:55 13 A. Yes.

12:39:56 14 Q. And you see that Tim Berners-Lee was there  
12:40:00 15 as well?

12:40:00 16 A. Yes.

12:40:01 17 Q. And Dale Dougherty was there?

12:40:02 18 A. Yes.

12:40:03 19 Q. And Scott Silvery was there?

12:40:08 20 A. Yes.

12:40:08 21 Q. And did you see Pei Wei make a  
12:40:12 22 demonstration of the Viola browser at the Cambridge  
12:40:19 23 conference in July 1993?

12:40:21 24 A. Yes.

12:40:22 25 Q. Can you tell us about that?

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12:40:25 2 A. Not completely. I mean, I remember being  
12:40:28 3 there, I remember seeing the browser, I remember  
12:40:30 4 talking to Pei Wei. What specifically do you want  
12:40:40 5 to know about?

12:40:40 6 Q. The demonstration that he had, did it have  
12:40:43 7 an external application?

12:40:44 8 A. Yes.

12:40:45 9 Q. And was he showing what appeared to be  
12:40:48 10 images in the browser that were coming in through an  
12:40:51 11 external application?

12:40:54 12 MR. RAPPAPORT: Objection, form.

12:40:55 13 BY THE WITNESS:

12:40:55 14 A. The Viola browser at that time had features  
12:40:59 15 similar to what was in Mosaic later -- later or  
12:41:07 16 earlier, I don't know the dates, but yes, it was --  
12:41:09 17 similar features to what we were doing where you had  
12:41:11 18 an external application that could view an image.

12:41:18 19 Q. Okay. And did you have any conversations  
12:41:20 20 with Pei Wei at that conference?

12:41:22 21 A. Yes.

12:41:24 22 Q. Will you tell us about those?

12:41:26 23 A. I don't remember everything discussed.  
12:41:30 24 What I remember was, I was talking to him about his  
12:41:32 25 use of the Viola tool kit, and I was wanting to see

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13:44:57 2 Q. And had you seen any demonstration of Pei  
13:44:58 3 Wei's work prior to this?

13:45:00 4 A. I had, yes.

13:45:02 5 Q. And do you know the specific date that you  
13:45:12 6 would have seen such demonstrations?

13:45:14 7 A. Well, I know I saw a demonstration of the  
13:45:17 8 Viola Web browser before I first started on the  
13:45:19 9 Mosaic Web browser. So that would have been in the  
13:45:22 10 fall of 1992.

13:45:33 11 Q. That version of Viola was different than  
13:45:38 12 your Mosaic browser that would come later, right?

13:45:45 13 MS. DOAN: Objection, form.

13:45:46 14 BY THE WITNESS:

13:45:46 15 A. That version of Viola was before we had  
13:45:50 16 Mosaic. There was then a version of Mosaic which  
13:45:54 17 was probably functionally equivalent to that  
13:45:56 18 version, and then both continued to develop and  
13:46:00 19 adding functions and they probably diverged so that  
13:46:03 20 they had different sets of functions after that.

13:46:06 21 Q. But am I correct that your Mosaic browser  
13:46:08 22 was different than Viola's in the functions that it  
13:46:12 23 provided because your Mosaic browser had in-line  
13:46:14 24 images?

13:46:15 25 A. Well, when you say my Mosaic browser it

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14:20:41 2 to the public or not?

14:20:42 3 A. I created it while I was at NCSA, yes.

14:20:45 4 Q. Okay. And just because you don't have any  
14:20:47 5 documents here today to show that doesn't mean that  
14:20:49 6 your testimony is in any way not truthful, correct?

14:20:56 7 A. My testimony is truthful, correct.

14:21:00 8 Q. Okay. Now, with respect to what you  
14:21:02 9 released to the public through Mosaic in  
14:21:06 10 version 0.9, you released images, in-line images,  
14:21:12 11 right?

14:21:13 12 A. Yes.

14:21:14 13 Q. Before -- you released that to the public  
14:21:16 14 before you left NCSA?

14:21:18 15 A. Yes.

14:21:19 16 Q. And before you left NCSA, you did see the  
14:21:24 17 demonstration of Viola, correct?

14:21:26 18 A. Yes.

14:21:26 19 Q. So he asked you a whole bunch of questions  
14:21:28 20 about whether you'd ever seen any other browser  
14:21:32 21 having any type of in-line video before you left  
14:21:38 22 NCSA; do you remember that?

14:21:41 23 A. I do.

14:21:42 24 Q. Okay. And when you answered those  
14:21:43 25 questions, okay, you were excluding Viola because

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14:21:47 2 you know you saw Viola, you just don't recall

14:21:50 3 sitting here today whether it had in-line video; is

14:21:52 4 that fair?

14:21:52 5 MR. RAPPAPORT: Objection, leading; objection,  
14:21:54 6 form.

14:21:54 7 BY THE WITNESS:

14:21:54 8 A. My memory of the previous testimony was we  
14:21:56 9 kept going round and round and he kept reframing his  
14:21:59 10 question until he reframed it as asking if I could  
14:22:04 11 be certain that it had been implemented in a browser  
14:22:07 12 before I left, and I said no.

14:22:09 13 Q. Okay. And the reason you can't be certain  
14:22:12 14 why the other is, is because you're not certain  
14:22:15 15 about Viola; is that right?

14:22:17 16 A. That's what I meant, yes.

14:22:18 17 Q. So if he asked you the question that you're  
14:22:20 18 not aware of any Web browser that implemented  
14:22:22 19 Viola's claimed invention before you left NCSA,  
14:22:27 20 okay, the browser of which you may be aware of, that  
14:22:31 21 would be Viola if it, in fact, did that, right?

14:22:34 22 MR. RAPPAPORT: Objection, leading; objection,  
14:22:36 23 form.

14:22:46 24 BY THE WITNESS:

14:22:46 25 A. You're confusing me again.

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14:22:47 2 Q. That's okay. Let me ask a better question.

14:22:49 3 I just want to make sure we're really clear  
14:22:51 4 for the jury because I don't want him putting words  
14:22:53 5 in your mouth.

14:22:54 6 A. I understand. But it's becoming very  
14:22:56 7 unclear because the same question gets asked  
14:22:58 8 multiple times with slight differences.

14:22:59 9 Q. Sure. That's okay.

14:23:00 10 We know before you left NCSA you saw Viola  
14:23:05 11 demonstrated?

14:23:06 12 A. Yes.

14:23:06 13 Q. And we know that Viola had some type of  
14:23:09 14 external application, right?

14:23:11 15 A. Yes.

14:23:12 16 Q. Okay. And you know that -- but what you  
14:23:13 17 don't recall one way or the other is whether it had  
14:23:15 18 in-line or not?

14:23:16 19 A. Correct.

14:23:17 20 MR. RAPPAPORT: Objection, leading.

14:23:18 21 BY MS. DOAN:

14:23:18 22 Q. So all of your answers with respect to  
14:23:20 23 Mr. Rappaport's questions, Viola may have done that,  
14:23:25 24 you're just not sure one way or the other; is that  
14:23:28 25 fair?

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14:23:28 2 MR. RAPPAPORT: Objection, leading.

14:23:30 3 BY THE WITNESS:

14:23:30 4 A. That is true.

14:23:30 5 Q. So when we're talking about another browser  
14:23:32 6 that you may have witnessed that implemented the  
14:23:36 7 invention that Eolas claims to have invented, okay,  
14:23:40 8 before you left NCSA, okay, that may or may not have  
14:23:44 9 been Viola, fair?

14:23:46 10 MR. RAPPAPORT: Objection, form; objection,  
14:23:48 11 leading.

14:23:49 12 BY THE WITNESS:

14:23:49 13 A. I may have witnessed another browser that  
14:23:52 14 implemented plug-ins before I left NCSA. I cannot  
14:23:56 15 be certain I witnessed another browser that  
14:23:59 16 implemented plug-ins before I left NCSA.

14:24:01 17 Q. That's fair. Okay.

14:24:03 18 Now, in addition there may have -- I know  
14:24:05 19 he's asking about browsers that you knew of at the  
14:24:09 20 time. Not with hindsight, but knew of at the time.  
14:24:12 21 Of course, there may have been other browsers out  
14:24:14 22 there that you did know about, fair?

14:24:16 23 A. Absolutely, certainly.

14:24:22 24 Q. For example, you did not know about  
14:24:28 25 Media View at that time; fair?