

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

)
Eolas Technologies Incorporated and The Regents of
the University of California,)

Plaintiffs,)

vs.)

Adobe Systems Inc., Amazon.com, Inc., CDW Corp.,)
Citigroup Inc., The Go Daddy Group, Inc., Google)
Inc., J.C. Penney Corporation, Inc., Staples, Inc.,)
Yahoo! Inc., and YouTube, LLC,)

Defendants.)
_____)

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

JURY TRIAL DEMANDED

**DEFENDANTS AMAZON.COM, INC., YAHOO! INC., GOOGLE INC., YOUTUBE,
LLC, ADOBE SYSTEMS INC., THE GO DADDY GROUP, INC., AND J.C. PENNEY
CORPORATION, INC.'S OBJECTION TO THE COURT'S AGENDA FOR THE
INVALIDITY TRIAL AND IN LIMINE ORDER RELATING TO CONTEXT FOR THE
INVALIDITY TRIAL**

Defendants Amazon.com, Inc., Yahoo! Inc., Google Inc., YouTube, LLC, Adobe Systems Inc., The Go Daddy Group, Inc., and J.C. Penney Corporation, Inc. (“Defendants”) respectfully object to the February 2, 2012 *sua sponte* Order *in limine* that no party shall state or imply that infringement has been conceded or that infringement is yet to be determined by this or any other jury (Dkt. No. 1315). Defendants respectfully submit that the jury must be advised that the issue of infringement has not yet been decided because there is a significant risk that, without that context, the jury will improperly assume that Defendants infringe resulting in undue prejudice to Defendants. This context is also necessary to allow the jury to assess the credibility of plaintiff’s witnesses, some of whom stand to gain millions of dollars should Eolas prevail on the issues of invalidity and infringement, and to prevent Plaintiffs from taking inconsistent positions regarding the scope of the claims in the two trials (*see* Dkt. No. 1274). Defendants

have proposed jury instructions that would allow the Court to advise the jury that the infringement issue is still open in a manner that is neutral and not prejudicial to either side.

Defendants also respectfully object to the February 1, 2012 Order Setting Agenda for the Invalidity Trial Set for 2-06-2012 (Dkt. No. 1310). Defendants have the burden — by clear and convincing evidence — to show invalidity of the patents-in-suit. The party with the burden of proof should be afforded the right to both open and close to the jury first and to conduct *voir dire* first.

Dated: February 3, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this the 3rd day of February, 2012.

/s/ Edward R. Reines

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