

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

Eolas Technologies Incorporated and
The Regents Of The University Of California,

Plaintiffs and Counterdefendants,

vs.

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

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 and Counterclaimants.

JURY TRIAL DEMANDED

DEFENDANTS' OFFER OF PROOF #5 REGARDING PRIOR ART CODE
AND DEMONSTRATIVE EXHIBITS

Defendants Adobe Systems, Inc., Amazon.com, Inc., Go Daddy Group, Inc., Google Inc.,
J.C. Penney Inc., Staples, Inc., Yahoo! Inc. and YouTube, LLC ("collectively Defendants")
hereby provide this offer of proof to the Court of the prior art source code, and demonstrative
videos and images of that prior art code that Defendants did or would have introduced into
evidence during the Invalidity Trial, had they been permitted to do so by the Court. This prior
art evidence, including as shown by the demonstrative videos and images, supports Defendants'
invalidity defenses under 35 U.S.C. § 102(a), (b) and (g), and § 103, including providing
evidence of prior conception and reduction to practice by another of the claimed invention.

Certain prior art codebases were used to generate demonstrative exhibits that show how the code functions, which Defendants sought to introduce but as to which the Court sustained Plaintiffs' objections. The following chart lists the demonstrative videos, attached as Exhibit A to the Declaration of Andrew L. Perito in Support of Defendants' Offer Of Proof #5 Regarding Prior Art Code And Demonstrative Exhibits. For each video, the chart below identifies the Viola browser, interactive Viola scripts, and Vplot executable application operating on contemporaneous machines built with contemporaneous operating systems and other supporting software that is illustrated in the demonstrative. The chart also cross-references to the exhibit or exhibits that contain only the Viola prior art code used in those demonstrations, and/or the complete codebases used to create those demonstrations and an indication as to whether the Court admitted those codebases into evidence. The codebases that were not admitted are attached as Perito Decl. Ex. B. These prior art codebases and videos are evidence and demonstrative exhibits establishing conception and reduction to practice, and public use during the May 7, 1993 demonstration to Sun engineers with respect to the plotting demonstration illustrated in JDX-274 and VID00000014 from 1:20-2:41.

Demonstrative Video Nos.	Code Package	Bates No.	Complete Video Code Exs. (Viola Code-Only Exs.)
VID00000017	SunOS 4.1.3 cdrom, X11R5 patch level 9 libXm, so.1.2, gcc-2.2.2 (to compile CERN httpd), CERN httpd from '91, Viola 931016	PA-NAT-00000113	JDX-272 (ADMITTED)  (JDX-290) (ADMITTED)
VID00000016	SunOS 4.1.3 cdrom, X11R5 patch level 9, libXm.so.1.2, gcc-2.2.2 (to compile	PA-NAT-00000114	JDX-273  (JDX-290; JDX-291) (ADMITTED)

	CERN httpd), CERN httpd from '91, Viola 931016, Vplot 930507		
VID00000013; VID00000022	SunOS 4.1.3 cdrom, X11R5 patch level 9, sgmls 930414, viola 930512, Vplot 930507	PA-NAT-00000115	JDX-274 (ADMITTED)  (JDX-291; JDX-292) (ADMITTED)
VID00000014	SunOS 4.1.3 cdrom, X11R5 patch level 9, sgmls 930414, Viola 930512, Vplot 930812	PA-NAT-00000116	JDX-275  (JDX-292; JDX-293) (ADMITTED)
VID00000015	SunOS 4.1.3 cdrom, traceroute-1.0 (to demo nfs), X11R5 patch level 9, sgmls 930414, Viola 930527, Vplot 930507	PA-NAT-00000117	JDX-276 (ADMITTED)  (JDX-291; JDX-295) (ADMITTED)
VID00000029	SunOS 4.1.3 cdrom, X11R5 patch level 9, gcc-2.2.2 (to compile CERN httpd), CERN httpd from '91, viola 920730	PA-NAT-00000118	JDX-277 (ADMITTED)
VID00000026; VID00000027	SunOS 4.1.3 cdrom, X11R5 patch level 9, libXm.so.1.2, gcc-2.2.2 (to compile CERN httpd), CERN httpd from '91, Viola 931016, Viola 930527, Vplot 930507	PA-NAT-00000120	JDX-279  (JDX-290; JDX-291; JDX-295) (ADMITTED)
VID00000012 <sup>1</sup>	SunOS 4.1.3 cdrom, X11R5 patch level 9, libXm.so.1.2, gcc-2.2.2 (to compile CERN httpd), CERN httpd from '91, viola	PA-NAT-00000116	JDX-278 (ADMITTED)

<sup>1</sup> VID00000012 depicts codebases dated after October 17, 1994 to rebut any argument of abandonment.

	950414 3.3, vplot 930507, 960920 plot.v		
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During the direct examination of Mr. Scott Silvey, Defendants also sought to introduce several screen captures that were made from contemporaneous machines, in the same configuration, and loaded with the same code as used in Defendants' demonstrative videos listed in the table above. The Court sustained Plaintiffs' objections to these materials, which are attached as Perito Decl. Ex. C.

In addition to the demonstrative videos listed above that were created for purposes of this case, Defendants also provide an offer of proof as to the October 4, 2001 videotaped deposition testimony of Karl Jacob, which depicts the sworn testimony of a Sun engineer who witnessed the May 7, 1993 public demonstration of the prior art Viola system. See [Trial Tr. 2/7/12 Morning, 14:16-16:15]. The Court sustained objections to Defendants' designations of Mr. Jacob's testimony at 17:20-24, 18:3-09, 18:16-17; 18:22-25; 19:6-9; 19:11-16, 19:18-20:6. A complete transcript of Defendants' proposed designations and associated video for Mr. Jacob are attached as Perito Decl. Ex. D and Ex. E, respectively.

Finally, Defendants offer as proof printouts of sections of prior art Viola source code (with associated demonstrative images illustrating how that code would have appeared when run on contemporaneous machines built with contemporaneous operating systems and other supporting software) from JDX-272 and JDX-274. These are attached as Perito Decl. Exs. F and G, respectively, and would have been introduced through the testimony of Mr. Scott Silvey as evidence and demonstrative exhibits establishing conception and reduction to practice, and public use during the May 7, 1993 demonstration to Sun engineers with respect to the plotting demonstration illustrated in JDX-274.

Respectfully submitted,

Dated: February 8, 2012

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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 8, 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), or by hand service. Any other counsel of record will be served by email and/or fax.

/s/ Andrew L. Perito