

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

EOLAS TECHNOLOGIES, INC.

Plaintiff,

v.

ADOBE SYSTEMS INC., et al.

Defendants.

CV 6:09-cv-446 LED

JURY DEMANDED

**DECLARATION OF JENNIFER HALTOM DOAN IN SUPPORT OF DEFENDANTS'
OFFER OF PROOF REGARDING TIME LIMITATION FOR INVALIDITY TRIAL**

I, Jennifer Haltom Doan, hereby declare:

1. I am an attorney with the law firm of Haltom & Doan and co-lead counsel for Amazon.com, Inc. and Yahoo!, Inc. in the above-captioned matter. I submit this declaration based on personal knowledge following a reasonable investigation. If called upon as a witness, I could competently testify to the truth of each statement herein.

2. I served as the lead attorney for Amazon and Yahoo! in the Invalidity Trial held from February 6-9, 2012 in the above-captioned matter.

3. As a result of the 7-hour time limitation for the Invalidity Trial, Defendants were forced to altogether drop expert support for invalidity theories they would have otherwise presented in the context of the Invalidity Trial and which at least some of the Defendants believed deserved greater priority. For example, as a result of the significant time constraints, Defendants were forced to omit their expert testimony and explanation for the jury on their written description defenses which resulted in the Court granting judgment as a matter of law against Defendants on their written description defenses during the charge conference earlier this

evening. Defendants were also forced to drop a number of invalidity theories including *inter alia* theories relating to the combination of Mosaic, HTML+ and the Janssen www-talk posting, the combination of Mosaic, Hypercard and Director, and the Cohen reference. Defendants were also forced to submit their inequitable conduct theories without presenting additional testimony and evidence relating to that issue for the Court's consideration of this equitable defense. For those theories that were presented, Defendants were required to significantly curtail their presentation of evidence and testimony on invalidity defenses under 35 U.S.C. § 102(a), (b) and (g), and § 103 on multiple references including Viola, MediaView, Mosaic and HTML+. For example, as described in more detail in the Offer of Proof submitted concurrently herewith, Defendants were forced to cut a number of witnesses from their trial presentation:

- a. Nicholas Godici, who present at the trial and sworn in as a witness, but was not called due to time constraints;
 - b. Dale Dougherty, who was present at the trial and sworn in as a witness, but was not called due to time constraints.
 - c. David Filo, who was present at the trial and sworn in as a witness, but was not called due to time constraints.
 - d. Christopher McRae, whose deposition testimony Defendants designated and intended to play at trial, but could not offer due to time constraints.
 - e. Sunita Rajdev, whose deposition testimony Defendants designated and intended to play at trial, but could not offer due to time constraints.
4. Defendants also were unable to introduce deposition testimony of other unavailable witnesses whose testimony was designated and had to significantly curtail counterdesignations to Plaintiffs' designated testimony due to time constraints. Over the course

of trial, Defendants were forced to make numerous cuts to their designations and counterdesignations as a result of the time limit.

5. Defendants were required to significantly curtail direct and cross-examination of witnesses that did testify at trial including Michael Doyle, Eric Bina, Tim Berners-Lee, David Raggett, Scott Silvey, Pei Wei, Dr. Richard Phillips, Dr. David M. Martin, William Tucker, David C. Martin and Cheong Ang. Throughout trial, Defendants repeatedly revised their direct and cross examination plans due to time constraints. This required that Defendants not elicit certain testimony from these individuals further supporting Defendants' invalidity and related defenses, unduly prejudicing Defendants' ability to fully present their case.

6. Due to time constraints, Defendants were only able to present their rebuttal case for 9 minutes, unfairly prejudicing Defendants' ability to fully rebut Plaintiffs' presentation of its case. Had Defendants had more time, they would have offered testimony including of the individuals identified in Paragraphs 2(a)-2(f) above.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8th day of February, 2012.

/s/ Jennifer H. Doan
Jennifer H. Doan