

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

**TYLER DIVISION**

**DATE:** February 8, 2012

**JUDGE**  
LEONARD DAVIS

**REPORTER:** Judy Werlinger

**LAW CLERKS:** Allan Bullwinkel

<b>EOLAS TECHNOLOGIES INCORPORATED, ET AL</b>	<b>CIVIL ACTION NO: 6:09-CV-446</b>
<b>V</b>	<b>JURY SELECTION (TRIAL A)</b>
<b>ADOBE SYSTEMS INCORPORATED, ET AL</b>	
<b>ATTORNEYS FOR PLAINTIFFS</b>	<b>ATTORNEY FOR DEFENDANT</b>
<b>SEE SIGN-IN SHEETS</b>	

On this day, came the parties by their attorneys and the following proceedings were had:

**OPEN:** 8:50 am

**ADJOURN:** 5:40 pm

<b>TIME:</b>	<b>MINUTES:</b>
8:50 am	Preliminary Proceedings: Pretrial matters taken up.
	Mr. Campbell addressed the Court on licenses to the patent and to have their Expert testify to those licenses. Mr. Campbell tendered a four page brief to the Court. Ed Reines responded. Mr. Campbell replied. Mr. Reines responded. Court to withhold ruling on the motion.
	Mr. Budwin addressed the Court on two slides. Doug McClellan responded. Court SUSTAINED objection to the slide. Mr. Budwin replied. Doug McClellan responded. Court SUSTAINED the objection.
	Mr. Reines addressed the Court for additional time. Mr. McKool responded. Mr. Reines replied. Court will give Defendant's an additional 30 minutes. Defendants have now used 4 hours and 35 minutes instead of 5 hours and 5 minutes.
9:05 am	Trial resumed. Jury seated in the courtroom.
	Court addressed the jury and welcomed them back.

**DAVID J. MALAND, CLERK**

**FILED: 2.8.2012**

BY: *Amy Strother*, Courtroom Deputy

TIME:	MINUTES:
	Mr. McClellan called <b>Dr. Richard Phillips</b> to the witness stand. Witness previously sworn.
	Direct examination of Mr. Phillips by Mr. McClellan. Mr. McClellan offered the witness as an Expert. Mr. McClellan offered <b>Defendant's Exhibit JDX121, and without objection, exhibit admitted.</b> Mr. Burgess asked to approach the bench.
	Bench conference held.
	Direct examination of Mr. Phillips by Mr. McClellan continued. Mr. McClellan offered <b>Defendant's Exhibit JDX184, and without objection, exhibit admitted.</b>
	Mr. McClellan passed the witness.
	Court addressed the parties on their exhibit lists. Court admitted all exhibits by Plaintiff's and Defendant's. (See attached exhibit lists to this minute entry).
10:13 am	Court in recess until 10:30 am.
10:30 am	Trial resumed. Jury seated in the courtroom.
	Cross examination of witness by Kevin Burgess. Mr. Burgess asked to approach the bench.
	Bench conference held.
	Cross examination of witness by Kevin Burgess continued.
	Mr. McClellan asked to approach the bench.
	Bench conference held.
	Redirect examination of witness by Mr. McClellan. Mr. Budwin asked to approach the bench.
	Bench conference held.
	Redirect examination of witness by Mr. McClellan continued.
	Re-cross examination of witness by Mr. Burgess.
	Redirect examination of witness by Mr. McClellan.
	Jennifer Doan addressed the Court. Defense rests
11:30 am	Court addressed the Jury and will excuse them for lunch until 12:30pm. Court reminded Jury of its instructions. Jury excused.
	<b>Jury not present.</b> Court gave the parties their times: Plaintiff has used 4 hours and 25 minutes and Defendants have used 5 hours and 48 minutes. There is 3 hours and 45 minutes of time for additional testimony.
	Jennifer Doan addressed the Court on offers of proof regarding viola code of reduction practice as well as alpha code, with Scott Silvey to make presentation. Mr. Budwin responded. Ms. Doan offered offer of proof of exhibit 1. Court and Ms. Doan discussed issue and Court asked Ms. Doan to mark and offer after lunch.

TIME:	MINUTES:
	Mr. Budwin presented JMOL as to no evidence of invalidity as to 112. Mr. Reines responded. Mr. Budwin replied. Court will take under advisement. . .
	Mr Budwin presented JMOL under section 101. Mr. Reines responded. Court GRANTED motion as to section 101
	Mr. Budwin presented JMOL under section 102A and 102B. Ms. Doan responded. Mr. Budwin addressed the alleged video shown, 7/1993 demo at wizard conference. Ms. Doan responded. Mr. Budwin addressed "alpha" 10/16/93 email. Ms. Doan responded. Mr. Budwin moved for JMOL. Mr. Doan responded. Mr. Budwin addressed 102G. Ms. Doan responded. Mr. Budwin replied and asked for JMOL under section 102 and 103. Mr. Budwin will file electronically this afternoon. Ms. Doan responded and asked for JMOL to be denied
	Ed Reines addressed the Court on an error earlier under 101, and requested additional time on behalf of CDW, Amazon and Yahoo
12:00 pm	Court in recess until 12:30pm.
12:40 pm	Trial resumed. <b>Jury not present.</b>
	Ed Reines addressed the Court on Plaintiff's conduct with the case. Mr. Campbell responded. Mr. Reines replied. Court finds that the settlements GRANT the Motion in Limine and not allow testimony. Mr. Campbell responded.
	Mr. Budwin addressed Ms. Doan's offer of proof. Ms. Doan addressed her offer of proof.
	Court advised parties a juror needs to leave by 5:00 pm
	Court asked for the Jury to be brought in. <b>Jury entered and seated in the courtroom.</b>
	Court welcomed the Jury back and advised Defendant rested.
	Mr. Burgess called <b>Dr. David M. Martin</b> to the witness stand. Witness previously sworn..
	Direct examination of Dr. Martin by Mr. Burgess. Mr. Lumish asked to approach the bench.
	Bench conference held.
	Direct examination of Dr. Martin by Mr. Burgess continued. Mr. Lumish asked to approach the bench.
	Bench conference held.
	Direct examination of Dr. Martin by Mr. Burgess continued. Court asked for parties to approach the bench.
	Bench conference held.
	Direct examination of Dr. Martin by Mr. Burgess continued. Court asked for parties to approach the bench.
	Bench conference held.
	Direct examination of Dr. Martin by Mr. Burgess continued.

TIME:	MINUTES:
	Cross examination of witness by Doug Lumish. Mr. Burgess asked to approach the bench.
	Bench conference held.
	Cross examination of witness by Doug Lumish continued. Mr. Lumish offered <b>Defendant's exhibit JDX71, and without objection, exhibit admitted.</b> Mr. Burgess asked to approach the bench.
	Bench conference held.
	Cross examination of witness by Doug Lumish continued.
	Mr. Lumish passed the witness. Redirect examination of witness by Mr. Burgess.
	Doug Cawley called <b>William Tucker</b> to the witness stand. Witness previously sworn.
	Direct examination of Mr. Tucker by Mr. Cawley.
	Mr. Cawley passed the witness. Cross examination of witness by Mike Jones.
	Redirect examination of witness by Mr. Cawley.
	Mr. Campbell called <b>Charles E. Krueger</b> by video deposition. Video played for the Jury.
3:05 pm	Court in recess until 3:20pm
3:20 pm	Trial resumed. Court asked for the jury to be brought in. Jury seated in the courtroom.
	Mr. Cawley called <b>David C. Martin</b> to the witness stand. Witness sworn.
	Direct examination of Mr. Martin by Mr. Cawley.
	Mr. Cawley passed the witness. Cross examination of witness by Jeff Homrig.
	Gayle Klein called <b>Cheong S. Ang</b> to the witness stand. Witness sworn.
	Mr. Cawley asked for David Martin to be excused. Witness excused.
	Direct examination of Mr. Ang by Ms. Klein.
	Ms. Klein passed the witness. Cross examination of witness by Doug Lumish.
	Mr. Lumish passed the witness. Redirect examination of witness by Ms. Klein.
	Ms. Klein passed the witness. Re-cross examination of witness by Mr. Lumish.
	Mr. Cawley asked to approach the bench.
	Bench conference held.
	Mr. Campbell addressed the Court on submitting documents. Plaintiff rests.
	Jennifer Doan recalled <b>Scott Silvey</b> to the witness stand. Witness previously sworn.
	Direct examination of Mr. Silvey by Ms. Doan.

TIME:	MINUTES:
	Mr. Budwin asked to approach the bench.
	Bench conference held.
	Direct examination of Mr. Silvey by Ms. Doan continued. Ms. Doan offered Defendant's exhibit JDX500 into evidence, with objections by Mr. Budwin. Court WITHHOLDS ruling until after cross examination. Ms. Doan asked to play a video about "alpha" for the jury. Mr. Budwin objected. Court asked counsel to approach the bench.
	Bench conference held.
	Cross examination of witness by Mr. Budwin.
	Redirect examination of witness by Ms. Doan. Mr. Budwin asked to approach the bench.
	Bench conference held.
	Redirect examination of witness by Ms. Doan continued.
	Defendant finally rests. Plaintiff rests.
	Court addressed the jury and will be recessing for the day. Court reminded Jury of its instructions.
5:02 pm	Court excuses jury.
	Reines addressed the Court on a Judgment as a Matter of Law.
	Court inquired if Plaintiff has objections to the Charge.
	Charge conference held.
	<p>Mr. McKool addressed the Court on Plaintiff's objections. Mr. Budwin addressed the court on obviousness. Court will.</p> <p>Court and parties discussed written description and Court GRANTS JMOL on written description and will remove language from the charge..</p>
	Mr. Reines presented Defendant's objection to the charge.
	Mr. Campbell addressed the Court on objections on pg 15 regarding licensing
	Mr. Reines addressed the Court on Judgment as Matter of Law under 102A, B and G. Court DENIED.
	Ms. Doan offered of proof 1 thru 4 and 5 and asked court to rule on exhibit 500. Court will rule on it in the morning.
	Mr. Reines offer of proof will be filed electronically and asked to lodge 2 videos. Mr. Budwin responded. Court will rule on it in the morning and asked the parties to meet and confer
5:40 pm	Court adjourned for the day.