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

EOLAS TECHNOLOGIES INCORPORATED, Plaintiff, v. ADOBE SYSTEMS INC., ET AL, Defendants.	CASE NO. 6:09-cv-446 Hon. Leonard E. Davis JURY

ANSWER OF DEFENDANT GOOGLE INC. TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Defendant Google Inc. ("Google") answers the Complaint of Eolas Technologies Incorporated ("Eolas") as follows:

I. PARTIES

1. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies them.

2. The allegations of paragraph 2 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies them.

3. The allegations of paragraph 3 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies them.

4. The allegations of paragraph 4 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies them.

5. The allegations of paragraph 5 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies them.

6. The allegations of paragraph 6 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies them.

7. The allegations of paragraph 7 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies them.

8. The allegations of paragraph 8 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies them.

9. The allegations of paragraph 9 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies them.

10. The allegations of paragraph 10 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies them.

11. The allegations of paragraph 11 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

12. Google admits that Google Inc. is a Delaware corporation with a principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google admits that it may be served with process through its registered agent Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company in Austin, Texas. Google denies any remaining allegations of paragraph 12.

13. The allegations of paragraph 13 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and therefore denies them.

14. The allegations of paragraph 14 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14, and therefore denies them.

15. The allegations of paragraph 15 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15, and therefore denies them.

16. The allegations of paragraph 16 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16, and therefore denies them.

17. The allegations of paragraph 17 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies them.

18. The allegations of paragraph 18 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18, and therefore denies them.

19. The allegations of paragraph 19 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19, and therefore denies them.

20. The allegations of paragraph 20 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20, and therefore denies them.

21. The allegations of paragraph 21 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21, and therefore denies them.

22. The allegations of paragraph 22 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22, and therefore denies them.

23. The allegations of paragraph 23 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23, and therefore denies them.

24. The allegations of paragraph 12 are not directed to Google, and therefore no answer is required. Google admits that YouTube, LLC is a Delaware corporation with a

principal place of business at 1000 Cherry Ave, San Bruno, CA 94066. Google admits that YouTube, LLC may be served with process through its registered agent Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company in Austin, Texas. Google denies any remaining allegations of paragraph 24.

II. JURISDICTION AND VENUE

25. Paragraph 25 of the Complaint does not state any allegations, and therefore Google believes that no response is required. However, Google expressly incorporates the contents of the preceding paragraphs of this Answer and includes them by reference as if fully set forth herein.

26. Google admits that this action invokes the United States patent laws, and that this Court has subject matter jurisdiction over patent law claims. Google denies any remaining allegations of paragraph 26.

27. Google does not contest personal jurisdiction in this District solely for the purpose of this action. Google denies that it has committed acts of infringement within the Eastern District of Texas, or any other District. To the extent the remaining allegations of paragraph 27 are directed at Google, they are denied. To the extent the allegations of paragraph 27 are directed to other entities, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27, and therefore denies them.

28. Google admits that venue is proper in the Eastern District of Texas for purposes of this particular action but not convenient or in the interests of justice under 28 U.S.C. 1404(a). To the extent the remaining allegations of paragraph 28 are directed at Google, they are denied. To the extent the allegations of paragraph 28 are directed to other entities, Google is without

knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28, and therefore denies them.

III. ALLEGATION OF PATENT INFRINGEMENT

29. Paragraph 29 of the Complaint does not state any allegations, and therefore Google believes that no response is required. However, Google expressly incorporates the contents of the preceding paragraphs of this Answer and includes them by reference as if fully set forth herein.

30. Google admits that U.S. Patent No. 5,838,906 ("the '906 patent") is entitled "Distributed hypermedia method for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document" and bears an issuance date of November 17, 1998, and also admits that U.S. Patent No. 7,599,985 ("the '985 patent") is entitled "Distributed hypermedia method and system for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document" and bears an issuance date of October 6, 2009 (collectively "the asserted patents"). Google admits that the United States Patent and Trademark Office issued an Ex Parte Reexamination Certificate of the '906 patent on two separate occasions. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 30, and therefore denies them.

31. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31, and therefore denies them.

32. The allegations of paragraph 32 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32, and therefore denies them.

33. The allegations of paragraph 33 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33, and therefore denies them.

34. The allegations of paragraph 34 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34, and therefore denies them.

35. The allegations of paragraph 35 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35, and therefore denies them.

36. The allegations of paragraph 36 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36, and therefore denies them.

37. The allegations of paragraph 37 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37, and therefore denies them.

38. The allegations of paragraph 38 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38, and therefore denies them.

39. The allegations of paragraph 39 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39, and therefore denies them.

40. The allegations of paragraph 40 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40, and therefore denies them.

41. The allegations of paragraph 41 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41, and therefore denies them.

42. Denied.

43. The allegations of paragraph 43 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43, and therefore denies them.

44. The allegations of paragraph 44 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44, and therefore denies them.

45. The allegations of paragraph 45 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45, and therefore denies them.

46. The allegations of paragraph 46 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46, and therefore denies them.

47. The allegations of paragraph 47 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47, and therefore denies them.

48. The allegations of paragraph 48 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48, and therefore denies them.

49. The allegations of paragraph 49 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49, and therefore denies them.

50. The allegations of paragraph 50 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50, and therefore denies them.

51. The allegations of paragraph 51 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51, and therefore denies them.

52. The allegations of paragraph 52 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52, and therefore denies them.

53. The allegations of paragraph 53 are not directed to Google, and therefore no answer is required. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53, and therefore denies them.

54. The allegations of paragraph 54 are not directed to Google, and therefore no answer is required, otherwise denied.

55. Google denies the allegations in paragraph 55 of the Complaint as they relate to Google. Google does not have sufficient information to admit or deny the remaining allegations of paragraph 55 and, therefore, denies these allegations.

56. Google denies the allegations in paragraph 56 of the Complaint as they relate to Google. Google does not have sufficient information to admit or deny the remaining allegations of paragraph 56 and, therefore, denies these allegations.

57. Google denies the allegations in paragraph 57 of the Complaint as they relate to Google. Google does not have sufficient information to admit or deny the remaining allegations of paragraph 57 and, therefore, denies these allegations.

58. Google denies the allegations in paragraph 58 of the Complaint as they relate to Google. Google does not have sufficient information to admit or deny the remaining allegations of paragraph 58 and, therefore, denies these allegations.

IV. RESPONSE TO PRAYER FOR RELIEF

These paragraphs set forth the statement of relief requested by Eolas to which no response is required. Google denies that Eolas is entitled to any of the requested relief and denies any allegations.

V. RESPONSE TO DEMAND FOR JURY TRIAL

Eolas' demand that all issues be determined by a jury trial does not state any allegation, and Google is not required to respond. To the extent that any allegations are included in the demand, Google denies these allegations.

AFFIRMATIVE DEFENSES

Subject to the responses above, Google alleges and assert the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, subject to its responses above, Google

specifically reserve all rights to allege additional affirmative defenses that become known through the course of discovery.

First Defense

1. Google does not infringe and has not infringed (not directly, contributorily, or by inducement) any claim of the asserted patents.

Second Defense

2. The claims of the asserted patents are invalid for failure to satisfy one or more of the requirements of Sections 100 *et seq.*, 101, 102, 103, and 112 of Title 35 of the United States Code.

Third Defense

3. The claims of the asserted patents are unenforceable, in whole or in part, by the doctrines of laches, waiver and/or estoppel, including prosecution history estoppel.

Fourth Defense

4. The claims of the asserted patents are unenforceable due to unclean hands.

Fifth Defense

5. Any and all products or actions accused of infringement have substantial uses that do not infringe and do not induce or contribute to the alleged infringement of the asserted claims of the asserted patents.

Sixth Defense

6. The owner of the asserted patents has dedicated to the public all methods, apparatus, and products disclosed in the asserted patents, but not literally claimed therein, and is estopped from claiming infringement by any such public domain methods, apparatus, or products.

Seventh Defense

7. Eolas' claim for damages, if any, against Google for alleged infringement of the asserted patents are limited by 35 U.S.C. §§ 286, 287 and 288.

Eighth Defense

8. Eolas is not entitled to injunctive relief as it, at a minimum, has not suffered any alleged immediate or irreparable injury, and Eolas has an adequate remedy at law.

Ninth Defense

9. This case is exceptional against Eolas under 35 U.S.C. § 285.

Tenth Defense

10. To the extent that the alleged invention has been used or manufactured by or for the United States, the claims for relief are barred by 28 U.S.C. § 1498.

PRAYER FOR RELIEF

WHEREFORE, Google prays for judgment as follows:

a. A judgment dismissing Eolas' Complaint against Google with prejudice;

b. A declaration that Google has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any valid and enforceable claims of the asserted patents;

c. A declaration that the asserted patents are invalid;

d. A declaration that Eolas' claims are barred by the doctrines of laches, equitable estoppel, and/or waiver.

e. A declaration that the asserted patents are unenforceable due to unclean hands.

f. A declaration that this case is exceptional and an award to Google of its reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees;

g. A judgment limiting or barring Eolas' ability to enforce the asserted patents in equity;

h. Such other and further relief as this Court may deem just and proper.

Dated: December 17, 2009

Respectfully submitted,

By: */s/ Scott T. Weingaertner, with permission by Michael E. Jones*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this **ANSWER OF DEFENDANT GOOGLE INC. TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT** via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 17th day of December 2009. Any other counsel of record will be served via First Class U.S. Mail on this same date.

/s/ Michael E. Jones