

**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.

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

C.A. NO. 6:09-CV-446

JUDGE LEONARD E. DAVIS

JURY TRIAL DEMANDED

STAPLES, INC.'S ANSWER AND DEFENSES

Defendant Staples, Inc. ("Staples") files this Answer to Plaintiff Eolas Technologies Incorporated's ("Eolas" or "Plaintiff") Complaint for Patent Infringement ("Complaint") and hereby states as follows:

PARTIES

1. Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint and therefore denies those allegations.

2. Paragraph 2 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies those allegations.

3. Paragraph 3 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and therefore denies those allegations.

4. Paragraph 4 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefore denies those allegations.

5. Paragraph 5 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and therefore denies those allegations.

6. Paragraph 6 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 6 and therefore denies those allegations.

7. Paragraph 7 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and therefore denies those allegations.

8. Paragraph 8 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and therefore denies those allegations.

9. Paragraph 9 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and therefore denies those allegations.

10. Paragraph 10 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 10 and therefore denies those allegations.

11. Paragraph 11 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and therefore denies those allegations.

12. Paragraph 12 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and therefore denies those allegations.

13. Paragraph 13 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 13 and therefore denies those allegations.

14. Paragraph 14 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 14 and therefore denies those allegations.

15. Paragraph 15 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 15 and therefore denies those allegations.

16. Paragraph 16 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 16 and therefore denies those allegations.

17. Paragraph 17 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 17 and therefore denies those allegations.

18. Paragraph 18 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 18 and therefore denies those allegations.

19. Paragraph 19 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 19 and therefore denies those allegations.

20. Staples admits the allegations of Paragraph 20 of the Complaint.

21. Paragraph 21 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies those allegations.

22. Paragraph 22 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 22 and therefore denies those allegations.

23. Paragraph 23 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 23 and therefore denies those allegations.

24. Paragraph 24 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 24 and therefore denies those allegations.

JURISDICTION AND VENUE

25. Staples refers to and incorporates herein its previous answers to Paragraphs 1-24.

26. Staples admits that Paragraph 26 of the Complaint for Patent Infringement alleges that this is an action arising under the patent laws of the United States, Title 35 of the United

States Code, but denies the merits of such action. Staples admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

27. The allegations contained in paragraph 27 constitute conclusions of law to which no answer is required.

28. The allegations contained in paragraph 28 constitute conclusions of law to which no answer is required.

**ANSWER TO ALLEGED INFRINGEMENT OF
U.S. PATENT NOS. 5,838,906 and 7,599,985**

29. Staples refers to and incorporates herein its previous answers to Paragraphs 1-28.

30. Staples admits that U.S. Patent No. 5,838,906 (the “‘906 Patent”) entitled “Distributed hypermedia method for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document,” and U.S. Patent No. 7,599,985 (the “‘985 Patent”) entitled “Distributed hypermedia method and system for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document” were issued by the U.S. Patent and Trademark Office on November 17, 1998 (‘906 Patent) and October 6, 2009 (‘985 Patent). Staples lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 30 of the Complaint, and therefore denies them.

31. Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 31 of the Complaint and therefore denies those allegations.

32. Paragraph 32 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 32 and therefore denies those allegations.

33. Paragraph 33 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 33 and therefore denies those allegations.

34. Paragraph 34 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 34 and therefore denies those allegations.

35. Paragraph 35 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 35 and therefore denies those allegations.

36. Paragraph 36 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 36 and therefore denies those allegations.

37. Paragraph 37 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 37 and therefore denies those allegations.

38. Paragraph 38 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 38 and therefore denies those allegations.

39. Paragraph 39 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 39 and therefore denies those allegations.

40. Paragraph 40 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 40 and therefore denies those allegations.

41. Paragraph 41 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 41 and therefore denies those allegations.

42. Paragraph 42 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 42 and therefore denies those allegations.

43. Paragraph 43 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 43 and therefore denies those allegations.

44. Paragraph 44 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 44 and therefore denies those allegations.

45. Paragraph 45 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 45 and therefore denies those allegations.

46. Paragraph 46 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 46 and therefore denies those allegations.

47. Paragraph 47 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 47 and therefore denies those allegations.

48. Paragraph 48 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 48 and therefore denies those allegations.

49. Paragraph 49 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 49 and therefore denies those allegations.

50. Staples denies the allegations of Paragraph 50 of the Complaint.

51. Paragraph 51 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 51 and therefore denies those allegations.

52. Paragraph 52 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 52 and therefore denies those allegations.

53. Paragraph 53 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 53 and therefore denies those allegations.

54. Paragraph 54 of the Complaint is not directed at Staples. To the extent any response is necessary, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 54 and therefore denies those allegations.

55. Staples admits that following commencement of this case it obtained knowledge of the '906 patent and denies the remaining allegations of Paragraph 55 of the Complaint. With respect to the other Defendants, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 55 of the Complaint and therefore denies those allegations.

56. With respect to Staples, Staples denies the allegations of Paragraph 56 of the Complaint. With respect to the other Defendants, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 56 and therefore denies those allegations.

57. With respect to Staples, Staples denies the allegations of Paragraph 57 of the Complaint. With respect to the other Defendants, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 57 and therefore denies those allegations.

58. With respect to Staples, Staples denies the allegations of Paragraph 58 of the Complaint. With respect to the other Defendants, Staples lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 58 and therefore denies those allegations.

ANSWER TO PRAYER FOR RELIEF

59. Staples denies that Plaintiff is entitled to any of the relief requested in the Complaint for Patent Infringement.

DEFENSES

Without conceding that any of the following necessarily must be pled as an affirmative defense, or that any of the following is not already at issue by virtue of the foregoing denials, and without prejudice to Staples' right to plead additional defenses as discovery into the facts of the

matter may warrant, Staples hereby asserts the following defenses. Staples specifically reserves the right to amend its defenses further as additional information is developed through discovery or otherwise.

FIRST DEFENSE

Staples does not infringe and has not infringed (either directly, contributorily, or by inducement) any claim of the '906 Patent and the '985 Patent either literally or under the doctrine of equivalents.

SECOND DEFENSE

The claims of the '906 Patent and the '985 Patent are invalid and/or unenforceable for failing to meet the requirements of one or more sections of Title 35, United States Code, including at least sections 102, 103, and/or 112, and one or more sections of Title 37, Code of Federal Regulations.

THIRD DEFENSE

Plaintiff's claim for damages is limited in time by 35 U.S.C. § 286.

FOURTH DEFENSE

The Complaint fails to plead, and Plaintiff cannot carry its burden to prove, compliance with, or an exception to, the notice requirements of the patent laws, Title 35 of the United States Code, including, but not limited to, 35 U.S.C. § 287, and therefore alleged damages, if any, predating Plaintiff's assertion of the '906 Patent and the '985 Patent against Staples are not recoverable by Plaintiff.

FIFTH DEFENSE

Plaintiff's Complaint fails to state a claim for which relief can be granted.

SIXTH DEFENSE

The claims stated in the Complaint are barred by the doctrines of laches, estoppel, or other equitable defenses.

SEVENTH DEFENSE

Plaintiff's claims for relief are limited by patent exhaustion and/or implied license.

EIGHTH DEFENSE

Plaintiff is estopped from asserting a construction of any claim of the '906 Patent and/or the '985 Patent in any manner inconsistent with prior positions taken before the United States Patent and Trademark Office or any court of law.

REQUESTS FOR RELIEF

Staples respectfully requests that this Court grant the following relief:

- A. Dismissal of the Complaint for Patent Infringement against Staples with prejudice;
- B. A declaration that Plaintiff recovers nothing from Staples;
- C. An order enjoining Plaintiff, its owners, agents, employees, attorneys, and representatives, and any successors or assigns thereof, from charging or asserting infringement of any claim of the '906 Patent and the '985 Patent against Staples or anyone in privity with Staples;
- D. An award to Staples of its reasonable attorneys' fees and costs; and
- E. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Under Federal Rule of Civil Procedure 38(b), Staples respectfully requests a trial by jury on all matters raised in its Answer, and Defenses, or in the Complaint for Patent Infringement.

Date: December 23, 2009

Respectfully submitted,

OF COUNSEL:

Mark G. Matuschak
Donald R. Steinberg
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000
mark.matuschak@wilmerhale.com
donald.steinberg@wilmerhale.com

Kate Hutchins
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, NY 10011
Telephone: (212) 230-8800
Facsimile: (212) 230-8888
kate.hutchins@wilmerhale.com

Daniel V. Williams
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
daniel.williams@wilmerhale.com

/s/ Michael E. Richardson

Michael E. Richardson
Texas Bar No. 24002838
BECK REDDEN & SECREST
1221 McKinney, Suite 4500
Houston, TX 77010
Telephone: (713) 951-6284
Facsimile: (713) 951-3720
mrichardson@brsfirm.com

**ATTORNEYS FOR DEFENDANT
STAPLES, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile transmission and/or first class mail this 23rd day of December, 2009.

/s/ Michael E. Richardson

Michael E. Richardson