

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

EOLAS TECHNOLOGIES, INC.,

Plaintiff,

vs.

ADOBE SYSTEMS, INC., ET AL.,

Defendants.

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

AND RELATED COUNTERCLAIMS

**DEFENDANTS ADOBE SYSTEMS, INC., AMAZON.COM, INC., APPLE INC.,
BLOCKBUSTER INC., EBAY INC., THE GO DADDY GROUP, INC., GOOGLE INC.,
NEW FRONTIER MEDIA, INC., PLAYBOY ENTERPRISES INTERNATIONAL, INC.,
SUN MICROSYSTEMS INC., YAHOO! INC., AND YOUTUBE, LLC'S
OPPOSITION-IN-PART TO EOLAS' MOTION FOR EXTENSION OF TIME TO FILE
RESPONSE TO MOVING DEFENDANTS' MOTION TO TRANSFER**

Moving Defendants¹ are not opposed to Eolas taking, as it puts it, “limited” and “narrowly-tailored” discovery concerning factors relevant to transfer of venue on an expedited basis. *See* Mot. for Extension² at 8. But there is no need for the preliminary issue of venue transfer to be transformed into burdensome and costly side litigation that ties up this proceeding for months. Moving Defendants are entitled to have their Motion to Transfer adjudicated promptly and Eolas is not entitled to embark on an open-ended fishing expedition on such issues.

See Saleh v. Titan Corp., 361 F. Supp. 2d 1152, 1170-71 (S.D. Cal. 2005) (denying request for

¹ “Moving Defendants” are Adobe Systems, Inc., Amazon.Com, Inc., Apple Inc., Blockbuster Inc., eBay Inc., The Go Daddy Group, Inc., Google Inc., New Frontier Media, Inc., Playboy Enterprises International, Inc., Sun Microsystems Inc., Yahoo! Inc., and YouTube, LLC. (Sun Microsystems Inc. is now known as Oracle America Inc.)

² Docket No. 241.

venue-related discovery) (“[N]one of the cases cited by plaintiffs suggest that a plaintiff faced with a motion for transfer may embark on a fishing expedition in an attempt to find witnesses in support of its case or suggest that it is appropriate to allow discovery on an issue as trivial as whether witnesses will be inconvenienced by having to travel from the east coast to California for litigation.”).

Moving Defendants therefore propose that Eolas be given a firm deadline of May 21, 2010 to complete its transfer-related discovery and to file its response to the Motion to Transfer. A firm deadline of May 21, 2010 is more than reasonable, for the following reasons:

1. The Motion to Transfer has been pending since February 10, 2010.³
2. Eolas’s Motion for Extension states that it is already “prepared to respond to the substance” of the Motion to Transfer (Motion for Extension at 9), and the brief itself confirms that Eolas already has in its possession extensive information that it contends is pertinent to the venue issues (*see id.* at 3-8 & Exs. 1, 2).
3. Initial disclosures will be exchanged on April 14, 2010,⁴ and thus by mid-April Defendants will have provided Eolas with “the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person’s connection with the case, and a brief, fair summary of the substance of the information known by such person,” which will provide Eolas with the geographic location of the relevant party witnesses.
4. The Moving Defendants are willing to provide on an expedited basis reasonable venue-related discovery that is, in fact, “limited” and “narrowly-tailored” to the issue of venue. *Cf.* Mot. for Extension at 8.

³ See Docket No. 214.

⁴ See Joint Agreed Discovery Order (Mar. 24, 2010) (Docket No. 245).

5. Eolas has retained the law firm of McKool Smith P.C. to represent it in this litigation and eight different attorneys from that firm have made appearances on Eolas's behalf. Eolas thus has the resources to conduct any venue-related discovery on an expedited basis, without unnecessary delays.

Accordingly, the Court should deny Eolas's request for a three-month extension and, instead, should provide Eolas with a firm deadline of May 21, 2010 to complete its transfer-related discovery and to respond to the Motion to Transfer.

Dated: April 5, 2010

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 5th day of April, 2010.

/s/Duy D. Nguyen
