

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

EOLAS TECHNOLOGIES INCORPORATED,	§	
	§	
	§	
PLAINTIFF,	§	CIVIL ACTION NO. 6:09-CV-446-LED
	§	
v.	§	
	§	JURY TRIAL DEMANDED
ADOBE SYSTEMS INC., ET AL,	§	
	§	
	§	
DEFENDANTS.	§	

**NOTICE OF SUBPOENA DUCES TECUM OF
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

PLEASE TAKE NOTICE that pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure, Defendant Apple Inc., by and through its counsel, is issuing the Subpoena Duces Tecum attached hereto as Exhibit 1 to the Regents of the University of California ("the Regents"). The Regents are instructed to produce the documents and things described in Attachment A for inspection and copying at Sidley Austin LLP, 555 California Street, 20th Floor, San Francisco, California 94104, on June 1, 2010 at 10:00 a.m., or at such time and place as may be agreed upon.

Dated: May 18, 2010

/s/Teague I. Donahey

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APPLE INC.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5. As such, this notice 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), 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 18th day of May, 2010.

/s/Duy D. Nguyen

Exhibit 1

UNITED STATES DISTRICT COURT

for the

Northern District of California

Eolas Technologies Inc.

Plaintiff

v.

Adobe Systems Inc., et al.

Defendant

Civil Action No. 6:09-cv-00446-LED

(If the action is pending in another district, state where:

Eastern District of Texas

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To: Regents of the University of California
1111 Franklin Street, 8th Floor, Oakland, CA 94607

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Attachment A

Place: Sidley Austin LLP, c/o Teague I. Donahey
555 California Street, 20th Floor
San Francisco, CA 94104

Date and Time:

06/01/2010 10:00

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 05/18/2010

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Teague I. Donahey
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Apple Inc., who issues or requests this subpoena, are:

Teague I. Donahey, Sidley Austin LLP
555 California Street, 20th Floor
San Francisco, CA 94104

Civil Action No. 6:09-cv-00446-LED

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

other *(specify):* _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT A

Pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure, Defendant Apple Inc. hereby requests that the Regents of the University of California respond to this Subpoena to Produce Documents, Information, or Objects and produce the documents and things described below for inspection and copying at Sidley Austin LLP, 555 California Street, 20th Floor, San Francisco, California 94104, on June 1, 2010 at 10:00 a.m., or at such time and place as may be agreed upon.

DEFINITIONS

The following definitions shall apply throughout these requests, regardless of whether upper or lower case letters are used:

A. "The Regents," "You," or "Your" shall mean the Regents of the University of California and its related or affiliated entities (including the University of California, Berkeley and the University of California, San Francisco), directors, officers, employees, agents, representatives, and attorneys.

B. "Eolas" shall mean Eolas Technologies Inc., and its subsidiaries, affiliates, directors, officers, employees, agents, representatives, and attorneys.

C. "The '906 Patent" shall mean U.S. Patent No. 5,838,906 (Application No. 08/324,443), entitled "Distributed Hypermedia Method for Automatically Invoking External Application Providing Interaction and Display of Embedded Objects within a Hypermedia Document," and issued on November 17, 1998, including any and all reexaminations of this patent (including Nos. 90/006,831 and 90/007,858).

D. "The '985 Patent" shall mean U.S. Patent No. 7,599,985 (Application No. 10/217,955), entitled "Distributed Hypermedia Method for Automatically Invoking External Application Providing Interaction and Display of Embedded Objects within a Hypermedia Document," and issued on October 6, 2009.

E. "Patents-in-Suit" shall mean the '906 Patent and the '985 Patent.

F. "Named Inventors" shall mean the inventors named on the face of the Patents-in-Suit, *i.e.*, Michael D. Doyle, David C. Martin and Cheong S. Ang.

G. "Document" shall be construed under the broadest possible construction under the Federal Rules of Civil Procedure and shall include with limitation electronically stored information and any written, recorded, graphic, or other matter, whether sent or received or made or used internally, however produced or reproduced and whatever the medium on which it was produced or reproduced (whether paper, cards, charts, file, or printouts; tapes, discs, belts, video tapes, audiotapes, tape recordings, cassettes, or other types of voice recording or transcription; computer tapes, databases, e-mails; pictures, photographs, slides, films, microfilms, motion pictures; or any other medium), and any other tangible item or thing of readable, recorded, or visual material of whatever nature including without limitation originals, drafts, and all non-identical copies of each document (which, by reason of any variation, such as the presence of absence of hand-written notes or underlining, represents a distinct version).

H. "Thing" shall be construed under the broadest possible construction under the Federal Rules of Civil Procedure.

I. "Communication" shall mean any transmittal, conveyance or exchange of a word, statement, fact, thing, idea, document, instruction, information, demand, question or other information by any medium, whether by written, oral or other means.

J. "Relate to," "Related to," or "Relating to" shall mean in whole or in part constituting, containing, embodying, reflecting, describing, analyzing, identifying, mentioning, stating, referring directly or indirectly to, dealing with, or in any way pertaining to.

INSTRUCTIONS

A. The singular form of a word should be interpreted in the plural as well. Any pronoun shall be construed to refer to the masculine, feminine, or neuter gender as in

each case is most appropriate. The words "and" and "or" shall be construed conjunctively or disjunctively, whichever makes the request most inclusive.

B. If no documents are responsive to a particular request, you are to state that no responsive documents exist.

C. If you decline to produce any document or part thereof based on a claim of privilege or any other claim, describe the nature and basis of your claim and the information withheld in a manner sufficient:

- (1) to disclose the facts upon which you rely in asserting your claim;
- (2) to permit the grounds and reasons for withholding the information to be identified unambiguously; and
- (3) to permit the information withheld to be identified unambiguously.

D. All documents requested are to be produced in the same file or other organizational environment in which they are maintained. For example, a document that is part of a file, docket, or other grouping, should be physically produced together with all other documents from said file, docket or grouping, in the same order or manner of arrangement as the original.

E. Unless specified otherwise, or agreed by the parties, electronically stored information shall be produced in the form in which it is ordinarily maintained.

F. A Protective Order is expected to be entered in this case by the United States District Court for the Eastern District of Texas. The Order will provide for the protection of confidential information produced by a third party to the litigation. Documents provided by You may be designated as appropriate and as provided for in the Protective Order.

DOCUMENT REQUESTS

1. All documents and things relating to the preparation, filing and/or prosecution of:

- (a) each of the Patents-in-Suit;

- (b) any patent or patent application (including any pending or abandoned applications, including Application Nos. 09/075,359; 11/586,918; and 11/593,258) that claim priority from or through each of the Patents-in-Suit;
- (c) any foreign counterpart patents or patent applications (including any unpublished applications) to any of (a) or (b);
- (d) any interferences involving any of (a) or (b), including Patent Interference 105,563 McK.

2. All documents and things relating to the ownership, title, transfer, or assignment of each of the Patents-in-Suit.

3. All documents and things relating to the conception, actual reduction to practice, or any act of diligence leading to the reduction to practice of the subject matter of each claim of the Patents-in-Suit, including, without limitation:

- Any engineering notebooks, laboratory notebooks, log books, records books, memoranda, design reviews, progress reports, technical reports, drawings, schematics, specifications, diagrams, videos, computer records, diaries, calendars, test results, or invention disclosures; and
- Any software embodying the subject matter of any claim of any of the Patents-in-Suit.

4. All documents and things relating to any pleading, motion, affidavit, declaration, discovery request, discovery response, report, recommendation, or order ever signed, served, or filed in connection with any lawsuit relating to any of the Patents-in-Suit, including, without limitation:

- Documents related to *Eolas Technologies Inc. and The Regents of the University of California v. Microsoft Corporation*, No. 99-CV-626 (N.D. Ill. filed Feb. 2, 1999); and

- Any communications with Eolas or the law firm of McKool Smith concerning any lawsuit or potential lawsuit involving any of the Patents-in-Suit, including but not limited to *Eolas Technologies, Inc. v. Adobe Systems, Inc. et al.*, No. 6:09-cv-446 (E.D. Tex. filed Oct. 6, 2009).

5. All documents and things relating to any agreements or draft agreements relating to the Patents-in-Suit, including, without limitation, assignments, licenses, releases, covenants not to sue, settlement agreements, and any efforts to sell or license any rights to any of the Patents-in-Suit.

6. All documents and things relating to publications, abstracts, papers, presentations, or speeches authored or given, in whole or in part, by any of the Named Inventors, including, without limitation:

- "Processing of Cross-Sectional Image Data for Reconstruction of Human Developmental Anatomy from Museum Specimens," by Michael D. Doyle et al., published in the SIGBIO Newsletter, February 1993; and
- "Integrated Control of Distributed Volume Visualization Through the World-Wide-Web," by C. Ang, D. Martin, M. Doyle, published in the Proceedings of Visualization 1994, IEEE Press, Washington, D.C., October 1994.

7. The personnel and employment history files for each of the Named Inventors, including résumés or curriculum vitae.

8. All documents relating to any payments or consideration offered to, made to, or received from the Named Inventors relating to the Patents-in-Suit.

9. All documents reflecting communications between the Regents and each of the Named Inventors concerning the Patents-in-Suit, Eolas, the Visible Embryo Project of the Center for Knowledge Management at the University of California, San Francisco, or web browser software.

10. All documents and things, not produced in response to another document request, relating to the Named Inventors, including, without limitation, archived email, hard disks, and hard disk backups, concerning the Patents-in-Suit, Eolas, the Visible Embryo Project of the Center for Knowledge Management at the University of California, San Francisco, or web browser software.

11. All documents and things relating to any actual or proposed agreements between the Regents and Eolas, related to:

- Any license(s) or rights to one or more of the Patents-in-Suit
- Any negotiations of any actual or proposed agreements

12. All documents relating to any payments or consideration offered to, made to, or received from any third party (including Eolas) related to any of the Patents-in-Suit.

13. All documents and things, not produced in response to another document request, relating to Eolas.

14. All documents and things relating to the Regents' patent prosecution policies and practices.

15. All documents and things relating to the Regents' patent licensing policies and practices.

16. All documents and things related to any federal funding of any work performed by the Named Inventors between January 1, 1993, and October 17, 1994, including, without limitation:

- Any research grant proposals, or responses to requests for proposals, involving any of the Named Inventors
- Any federal funds granted to any of the Named Inventors
- Any reports generated by any of the Named Inventors related to any work supported by federal funding
- Any requirements or limitations imposed by the federal government on any of the Named Inventors

17. All documents and things relating to any prior art to any of the Patents-in-Suit, including without limitation:

- All documents and things related to any work done by Pei-Yuan Wei on "Viola" or "ViolaWWW," including any work done at the eXperimental Computing Facility ("XCF") at the University of California, Berkeley;
- All documents and things related to any work done by Scott Silvey on "xplot," including any work done at the eXperimental Computing Facility ("XCF") at the University of California, Berkeley;
- Any FTP logs of activity before October 17, 1994, showing the transfer of any electronic files related to Viola, ViolaWWW, or xplot; and
- All memos and emails before October 17, 1994, that are To, From, or CC or BCC any of the following people and relate to Viola, ViolaWWW, VIS, xplot, Mosaic, HTML+, or the EMBED tag:
 - Michael D. Doyle (*e.g.*, miked@visembryo.ucsf.edu or mddoyle@netcom.com);
 - David C. Martin (*e.g.*, demartin@ckm.ucsf.edu);
 - Cheong S. Ang (*e.g.*, cheong@library.ucsf.edu);
 - Pei-Yuan Wei (*e.g.*, wei@xcf.berkeley.edu or wei@sting.berkeley.edu);
 - Scott Silvey (*e.g.*, scott@xcf.berkeley.edu or scott@graft.berkeley.edu);
 - Chris McRae (*e.g.*, mcrac@lib.ucsf.edu);
 - David Raggett (*e.g.*, dsr@hplb.hpl.hp.com);
 - Marc Andreessen or anyone else at NCSA (*e.g.*, email addresses ending in @ncsa.uiuc.edu); and
 - Dale Dougherty or anyone else at O'Reilly Media (*e.g.*, email addresses ending in @ora.com).

18. All documents related to retention policies, including without limitation:
- Any retention policies of general applicability to the documents and things requested above; and
 - Any retention policies or "litigation holds" specific to any documents or things related to any pending or reasonably anticipated litigation related to any of the Patents-in-Suit.