

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

EOLAS TECHNOLOGIES	§	
INCORPORATED,	§	
	§	
Plaintiff,	§	C.A. NO. 6:09-CV-446
	§	
v.	§	JUDGE DAVIS
	§	
ADOBE SYSTEMS INC.,	§	JURY TRIAL DEMANDED
ET AL.,	§	
	§	
Defendants.	§	
	§	

**BLOCKBUSTER INC.'S ANSWER AND DEFENSES TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Blockbuster Inc. (“Blockbuster”) files this answer to Eolas Technologies Incorporated (“Eolas” or “Plaintiff”) First Amended Complaint for Patent Infringement (Doc. No. 285) and hereby states as follows:

**PARTIES**

1. Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

3. Paragraph 3 of the First Amended Complaint for Patent Infringement is not directed at Blockbuster. To the extent any response is necessary, Blockbuster lacks knowledge

and information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

5. Admitted.

6. Paragraph 6 of the First Amended Complaint for Patent Infringement is not directed at Blockbuster. To the extent any response is necessary, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

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

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

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

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

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

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

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

15. Paragraph 15 of the First Amended Complaint for Patent Infringement is not directed at Blockbuster. To the extent any response is necessary, Blockbuster lacks knowledge

and information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

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

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

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

20. Paragraph 20 of the First Amended Complaint for Patent Infringement is not directed at Blockbuster. To the extent any response is necessary, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

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

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

#### **JURISDICTION AND VENUE**

24. Paragraph 24 of the First Amended Complaint for Patent Infringement does not require a response from Blockbuster.

25. Blockbuster admits that Paragraph 25 of the First Amended 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. Blockbuster admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

26. With respect to Blockbuster, Blockbuster admits that personal jurisdiction exists because it has sales in Texas and in this judicial district. With respect to the other Defendants, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the

allegations of Paragraph 26 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

27. With respect to Blockbuster, Blockbuster admits that venue is proper in this district under 28 U.S.C. §§ 1391(b-c) and 1400(b). With respect to the other Defendants, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

28. Paragraph 28 of the First Amended Complaint for Patent Infringement does not require a response from Blockbuster.

29. Blockbuster admits that United States 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 United States 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 United States Patent and Trademark Office on November 17, 1998 (‘906 Patent) and October 6, 2009 (‘985 Patent). Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 29, and therefore denies the same.

30. Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 30 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

31. Paragraph 31 of the First Amended Complaint for Patent Infringement is not directed at Blockbuster. To the extent any response is necessary, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 31 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

33. Paragraph 33 of the First Amended Complaint for Patent Infringement is not directed at Blockbuster. To the extent any response is necessary, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

34. Denied.

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

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

37. Paragraph 37 of the First Amended Complaint for Patent Infringement is not directed at Blockbuster. To the extent any response is necessary, Blockbuster lacks knowledge

and information sufficient to form a belief as to the truth of the allegations of Paragraph 37 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

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

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

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

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



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

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

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

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

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

48. Paragraph 48 of the First Amended Complaint for Patent Infringement is not directed at Blockbuster. To the extent any response is necessary, Blockbuster lacks knowledge

and information sufficient to form a belief as to the truth of the allegations of Paragraph 48 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

50. Paragraph 50 of the First Amended Complaint for Patent Infringement is not directed at Blockbuster. To the extent any response is necessary, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 50 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

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

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

53. With respect to Blockbuster, denied. Blockbuster further denies that it is now engaging in or has ever engaged in infringing activities. With respect to the other Defendants, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 53 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

54. With respect to Blockbuster, denied. With respect to the other Defendants, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 54 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

55. With respect to Blockbuster, denied. With respect to the other Defendants, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 55 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

56. With respect to Blockbuster, denied. With respect to the other Defendants, Blockbuster lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 56 of the First Amended Complaint for Patent Infringement and therefore denies those allegations.

#### **ANSWER TO PRAYER FOR RELIEF**

57. Blockbuster denies that Plaintiff is entitled to any of the relief requested in the First Amended Complaint for Patent Infringement.

#### **DEFENSES**

58. 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 Blockbuster's right to plead additional defenses as discovery into the facts of the matter warrant, Blockbuster hereby asserts the following defenses. Blockbuster specifically reserves the right to amend its defenses further as additional information is developed through discovery or otherwise.

### **FIRST DEFENSE**

59. Blockbuster 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**

60. 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 101, 102, 103, and/or 112, and one or more sections of Title 37, Code of Federal Regulations.

### **THIRD DEFENSE**

61. Plaintiff is estopped by the prosecution history of the '906 Patent and/or the '985 Patent from asserting infringement of any claim of the '906 Patent and/or the '985 Patent.

### **FOURTH DEFENSE**

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

### **FIFTH DEFENSE**

63. Without shifting the burden of proof, which lies with Plaintiff, Blockbuster avers that the First Amended Complaint for Patent Infringement fails to plead, and that Plaintiff cannot carry their 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 that alleged damages, if any, predating Plaintiff's assertion of the '906 Patent and the '985 Patent against Blockbuster are not recoverable by Plaintiff.

**SIXTH DEFENSE**

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

**SEVENTH DEFENSE**

65. Eolas's claims against Blockbuster are barred due to patent exhaustion.

**EIGHTH DEFENSE**

66. Eolas's claims are precluded to the extent that an express or implied license bars recovery against Blockbuster, where, for example, any accused systems are supplied, directly or indirectly, to Blockbuster or to another entity, having an express or implied license or covenant not to sue.

**NINTH DEFENSE**

67. To the extent that Eolas asserts that Blockbuster indirectly infringes the '906 Patent or the '985 Patent, either by contributory infringement or inducement, Blockbuster is not liable to Eolas for the acts alleged to have been performed before Blockbuster allegedly knew that its actions would cause any direct infringement of the '906 Patent or the '985 Patent.

**TENTH DEFENSE**

68. Eolas is not entitled to any injunctive relief as demanded because any alleged injury to Eolas is neither immediate nor irreparable, and Eolas has adequate remedies at law.

**BLOCKBUSTER'S COUNTERCLAIMS FOR DECLARATORY JUDGMENT OF NON-  
INFRINGEMENT AND INVALIDITY**

Without admitting any of the allegations of the Amended Complaint other than those expressly admitted herein, and without prejudice to the pending motion to transfer or Blockbuster's right to plead additional counterclaims as the facts of the matter warrant, Blockbuster hereby asserts the following counterclaims against Eolas.

## **THE PARTIES**

69. Blockbuster incorporates by reference its responses and allegations Paragraphs 1–68 above as though fully repeated here.

70. Blockbuster is a Delaware corporation with its corporate headquarters and principal place of business at 1201 Elm Street, Dallas, TX 75270.

71. Eolas alleges that it is a corporation organized and existing under the laws of Texas, with its principal place of business at 313 East Charnwood Street, Tyler, TX 75701.

72. Eolas alleges that it has an exclusive license to U.S. Patent Nos. 5,838,906 (“the ‘906 Patent”) and 7,599,985 (“the ‘985 Patent”), which includes, without limitation, the following: (a) all exclusionary rights under the patents, including, but not limited to, (i) the exclusive right to exclude others from making, using, offering for sale, or selling products embodying the patented inventions throughout the United States or importing such products into the United States, and (ii) the exclusive right to exclude others from using and otherwise practicing methods embodying the patented inventions throughout the United States; and (b) the exclusive right to sue and seek damages for infringement of any of the exclusionary rights identified above.

## **JURISDICTION AND VENUE**

73. By filing the Complaint in this action, Eolas has consented to the personal jurisdiction of this Court.

74. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

75. In view of the filing of this lawsuit by Eolas and Blockbuster’s defenses, there exists an actual and justiciable controversy between the parties regarding the validity and alleged infringement by Blockbuster of the ‘906 and ‘985 patents.

76. The Court has subject matter jurisdiction over these Counterclaims pursuant to 28 U.S.C. §§ 2201, 2202, and 1338.

**FIRST CLAIM FOR RELIEF**  
**(DECLARATORY JUDGMENT OF INVALIDITY**  
**OF THE ‘906 AND ‘985 PATENTS)**

77. Blockbuster incorporates by reference paragraphs 69-76 above as though fully repeated here.

78. The claims of the ‘906 patent and ‘985 patent are invalid for failing to meet the requirements of one or more sections of Title 35, United States Code, including at least sections 101, 102, 103, and/or 112, and one or more sections of Title 37, Code of Federal Regulations.

**SECOND CLAIM FOR RELIEF**  
**(DECLARATORY JUDGMENT OF NON-INFRINGEMENT**  
**OF THE ‘906 AND ‘985 PATENTS)**

79. Blockbuster incorporates by reference paragraphs 69-76 above as though fully repeated here.

80. Each method claim of the ‘906 patent (claims 1-5, 11-12) and the ‘985 patent (claims 1-15, 20-27, 32-47) requires executing a browser application at or on a client workstation.

81. Each apparatus claim of the ‘906 patent (claims 6-10, 13-14) and the ‘985 patent (claims 16-19, 28-31) requires computer readable program code or software that causes the client workstation to execute a browser application.

82. Each method claim of the ‘906 patent (claims 1-5, 11-12) and the ‘985 patent (claims 1-15, 20-27, 32-47) requires a browser application to retrieve a hypermedia document.

83. Each apparatus claim of the '906 patent (claims 6-10, 13-14) and the '985 patent (claims 16-19, 28-31) requires computer readable program code or software that causes a browser application to retrieve a hypermedia document.

84. Each method claim of the '906 patent (claims 1-5, 11-12) and the '985 patent (claims 1-15, 20-27, 32-47) requires the browser application to display the retrieved hypermedia document on the client workstation.

85. Each apparatus claim of the '906 patent (claims 6-10, 13-14) and the '985 patent (claims 16-19, 28-31) requires computer readable program code or software that causes a browser application to display the retrieved hypermedia document on the client workstation.

86. Each method claim of the '906 patent (claims 1-5, 11-12) and the '985 patent (claims 1-15, 20-27, 32-47) requires the browser application to parse a hypermedia document.

87. Each apparatus claim of the '906 patent (claims 6-10, 13-14) and the '985 patent (claims 16-19, 28-31) requires computer readable program code or software that causes a browser application to parse a hypermedia document.

88. Each method claim of the '906 patent (claims 1-5, 11-12) and the '985 patent (claims 1-15, 20-27, 32-47) requires the browser application to automatically invoke an executable application that is external to the retrieved hypermedia document ("external executable application"), when an embed text format is parsed.

89. Each apparatus claim of the '906 patent (claims 6-10, 13-14) and the '985 patent (claims 16-19, 28-31) requires computer readable program code or software that causes a browser application to automatically invoke an external executable application, when an embed text format is parsed.



90. Each method claim of the '906 patent (claims 1-5, 11-12) and the '985 patent (claims 1-15, 20-27, 32-47) requires the external executable application to be displayed within the same browser window as the retrieved hypermedia document.

91. Each apparatus claim of the '906 patent (claims 6-10, 13-14) and the '985 patent (claims 16-19, 28-31) requires computer readable program code or software installed on a client workstation for causing the browser application to display the external executable application within the same browser window as the retrieved hypermedia document.

92. An end-user has the option of disabling the ability of commercially available browser applications, such as Internet Explorer, Mozilla Firefox, Safari, or Opera, from automatically invoking external executable applications. For example, an end-user may choose to disable the browser application from automatically invoking Flash plug-in or Java plug-in.

93. Blockbuster does not make, sell, offer to sell, or import client workstations.

94. Blockbuster does not make, sell, offer to sell, or import browser applications.

95. Blockbuster does not make, sell, offer to sell, or import computer readable program code or software that causes a client workstation to execute a browser application.

96. Eolas has granted Microsoft Corporation a license to the '906 patent and/or the '985 patent (the "Microsoft license") in connection with Microsoft's Internet Explorer browser application, as publicly acknowledged in, for example, Microsoft's Internet Explorer blog. *See, e.g.,* <http://blogs.msdn.com/b/ie/archive/2007/11/08/ie-automatic-component-activation-changes-to-ie-activex-update.aspx> (last visited, June 4, 2010) ("Microsoft has now licensed the technologies from Eolas").

97. Eolas has previously alleged that Microsoft's Internet Explorer embodies essential features of the claimed inventions of the '906 and '985 patents.

98. Based on the Microsoft license, Eolas has exhausted all remedies for any alleged infringement (direct, contributory, or induced) that occurs when an end-user uses Internet Explorer to access Blockbuster's website, [www.blockbuster.com](http://www.blockbuster.com).

99. Eolas's claims against Blockbuster are barred in whole or in part due to patent exhaustion and/or license based on an express or implied license to the '906 patent and the '985 patent.

100. Blockbuster does not infringe and has not infringed (either directly, contributorily, or by inducement) any claim of the '906 patent or the '985 patent.

### **REQUESTS FOR RELIEF**

Blockbuster respectfully requests that this Court grant the following relief:

- A. Dismissal of the Complaint and Demand for Jury Trial against Blockbuster with prejudice;
- B. A declaration that Plaintiff recover nothing from Blockbuster;
- C. A declaration that Blockbuster has not infringed, either directly or indirectly, and is not infringing, either directly or indirectly, any valid and enforceable claim of the '906 patent or the '985 patent;
- D. A declaration that the '906 patent and the '985 patent are invalid;
- E. 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 or the '985 patent against Blockbuster or anyone in privity with Blockbuster;
- F. An award to Blockbuster of its reasonable attorneys fees and costs; and
- G. Such other and further relief as the Court deems just and proper.

**JURY DEMAND**

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

Dated: June 7, 2010

Respectfully Submitted,

VINSON & ELKINS L.L.P.

/s/ Scott Breedlove  
Scott Breedlove (TX Bar No. 00790361)  
LEAD ATTORNEY  
Vinson & Elkins L.L.P.  
2001 Ross Avenue  
3700 Trammell Crow Center  
Dallas, TX 75201-2975  
Telephone 214.220.7993  
Facsimile: 214.999.7993  
[sbreedlove@velaw.com](mailto:sbreedlove@velaw.com)

David Kent Wooten (TX Bar No. 24033477)  
Vinson & Elkins L.L.P.  
2500 First City Tower  
1001 Fannin Street  
Houston, TX 77002  
Telephone: 713.758.2222  
Facsimile: 713.615.5216  
[dwooten@velaw.com](mailto:dwooten@velaw.com)

**Attorneys for Defendant  
Blockbuster 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 Monday, June 07, 2010.

*/s/ Scott Breedlove*

\_\_\_\_\_  
Scott Breedlove