

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

EOLAS TECHNOLOGIES	§	
INCORPORATED,	§	
	§	
<i>Plaintiff,</i>	§	C.A. NO. 6:09-CV-446 (LED)
	§	
v.	§	
	§	
ADOBE SYSTEMS INC.,	§	JURY TRIAL DEMANDED
AMAZON.COM, INC., APPLE INC.,	§	
ARGOSY PUBLISHING, INC.,	§	
BLOCKBUSTER INC., CDW CORP.,	§	
CITIGROUP INC., EBAY INC.,	§	
FRITO-LAY, INC.,	§	
THE GO DADDY GROUP, INC.,	§	
GOOGLE INC.,	§	
J.C. PENNY COMPANY, INC.,	§	
JPMORGAN CHASE & CO.,	§	
NEW FRONTIER MEDIA, INC.,	§	
OFFICE DEPOT, INC.,	§	
PEROT SYSTEMS CORP.,	§	
PLAYBOY ENTERPRISES	§	
INTERNATIONAL, INC.,	§	
RENT-A-CENTER, INC., STAPLES, INC.,	§	
SUN MICROSYSTEMS INC.,	§	
TEXAS INSTRUMENTS, INC.,	§	
YAHOO! INC., and YOUTUBE, LLC	§	
	§	
<i>Defendants.</i>	§	
	§	

**PLAYBOY ENTERPRISES INTERNATIONAL, INC.’S
ANSWER AND DEFENSES IN RESPONSE TO
PLAINTIFF EOLA TECHNOLOGIES INC.’S FIRST AMENDED COMPLAINT**

Defendant Playboy Enterprises International, Inc. (“Playboy”) files this answer to Eolas Technologies Incorporated’s (“Eolas” or “Plaintiff”) First Amended Complaint (“First Amended Complaint”), and hereby states as follows:

PARTIES

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

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

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

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

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

6. Paragraph 6 of the First Amended Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a belief

as to the truth of the allegations in Paragraph 6 of the First Amended Complaint and therefore denies those allegations.

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

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

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

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

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

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

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

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

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

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

17. Admitted.

18. Paragraph 18 of the First Amended Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a

belief as to the truth of the allegations in Paragraph 18 of the First Amended Complaint and therefore denies those allegations.

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

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

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

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

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

JURISDICTION AND VENUE

24. Paragraph 24 of the First Amended Complaint does not require a response from Playboy.

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

26. Playboy admits that this Court has personal jurisdiction over it for purposes of this action. Playboy specifically denies that it has committed patent infringement in the State of Texas, in the Eastern District of Texas, or in any other state or judicial district. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the First Amended Complaint and therefore denies those allegations.

27. With respect to Playboy, Playboy admits that this Court has personal jurisdiction over it for purposes of this action and therefore, the statutory requirements for venue under 28 U.S.C. §§ 1391(b)-(c) and 1400 are met. However, while venue may be had in the Eastern District of Texas, this forum is inconvenient and burdensome for Playboy. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the First Amended Complaint and therefore denies those allegations.

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

28. Paragraph 28 of the First Amended Complaint does not require a response from Playboy.

29. Playboy 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) respectively. Playboy 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. Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 30 of the First Amended Complaint and therefore denies those allegations.

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

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

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

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

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

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

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

38. Paragraph 38 of the First Amended Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a

belief as to the truth of the allegations of Paragraph 38 of the First Amended Complaint and therefore denies those allegations.

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

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

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

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

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

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

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

46. Denied.

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

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

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

50. Paragraph 50 of the First Amended Complaint is not directed at Playboy. To the extent any response is necessary, Playboy lacks knowledge and information sufficient to form a

belief as to the truth of the allegations of Paragraph 50 of the First Amended Complaint and therefore denies those allegations.

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

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

53. With respect to Playboy, Playboy denies that Playboy has infringed (whether willfully or otherwise) the '906 Patent. Playboy further denies any knowledge of the '906 Patent prior to the filing of this action. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 53 of the First Amended Complaint and therefore denies those allegations.

54. With respect to Playboy, Playboy denies that Playboy has infringed, either directly or indirectly, any claim of the '906 Patent or the '985 Patent. Playboy further denies that Eolas has suffered or will suffer any injury due to Playboy's accused acts or practices and denies Eolas is entitled to any relief, whether monetary or injunctive. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 54 of the First Amended Complaint and therefore denies those allegations.

55. With respect to Playboy, Playboy denies that Playboy has infringed, either directly or indirectly, any claim of the '906 Patent or the '985 Patent. Playboy further denies that Eolas has suffered or will suffer any injury due to Playboy's accused acts or practices and denies Eolas is entitled to any relief, whether monetary or injunctive. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 55 of the First Amended Complaint and therefore denies those allegations.

56. With respect to Playboy, Playboy denies that Playboy has infringed, either directly or indirectly, any claim of the '906 Patent or the '985 Patent. Playboy further denies that Eolas has suffered or will suffer any injury due to Playboy's accused acts or practices and denies Eolas is entitled to any relief, whether monetary or injunctive. With respect to the other Defendants, Playboy lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 56 of the First Amended Complaint and therefore denies those allegations.

ANSWER TO PRAYER FOR RELIEF

57. Playboy denies that Plaintiff is entitled to any of the relief requested in its First Amended Complaint.

JURY DEMAND

58. Paragraph 58 of the First Amended Complaint does not require a response from Playboy.

DEFENSES

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

FIRST DEFENSE

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

SECOND DEFENSE

61. 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

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

FOURTH DEFENSE

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

FIFTH DEFENSE

64. Without shifting the burden of proof, which lies with Plaintiff, Playboy avers that the First Amended Complaint fails to plead, and that 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 that alleged

damages, if any, predating Plaintiff's assertion of the '906 Patent and the '985 Patent against Playboy are not recoverable by Plaintiff.

SIXTH DEFENSE

65. Plaintiff's claims against Playboy are barred in whole or in part by one or more of the equitable doctrines of laches, estoppel, and/or waiver.

SEVENTH DEFENSE

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

Date: June 7, 2010

Respectfully submitted,

/s/ Avelyn M. Ross

David B. Weaver (SBOT # 00798576)

Avelyn M. Ross (SBOT #24027871)

Gentry C. McLean (SBOT #24046403)

VINSON & ELKINS L.L.P.

2801 Via Fortuna, Suite 100

Austin, Texas 78746-7568

Tel: (512) 542-8400

Fax: (512) 236-3218

dweaver@velaw.com

aross@velaw.com

gmclean@velaw.com

*Attorneys for Defendant Playboy Enterprises
International 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) on June 7, 2010. Any other counsel of record will be served by first class mail on this same date.

/s/ Avelyn M. Ross

Avelyn M. Ross