

**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
	§	
vs.	§	
	§	
Adobe Systems Inc., Amazon.com, Inc., Apple Inc., Blockbuster Inc., CDW Corp., Citigroup Inc., eBay Inc., Frito-Lay, Inc., The Go Daddy Group, Inc., Google Inc., J.C. Penney 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	§	JURY TRIAL
	§	
Defendants.	§	

**EOLAS' REPLY TO DEFENDANT OFFICE DEPOT, INC.'S ANSWER AND
COUNTERCLAIMS TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff Eolas Technologies Incorporated (“Eolas” or “Plaintiff”) hereby replies to the counterclaims set forth in Office Depot, Inc.’s (“Office Depot”) Answer and Counterclaims to Plaintiff’s First Amended Complaint (dkt. 300, hereinafter “Answer and Counterclaims”) as follows:

COUNTERCLAIMS

The Parties

63. On information and belief, based solely on Office Depot's response to paragraph 15 of Eolas' Complaint, Eolas admits the allegations in paragraph 63 of Office Depot's Answer and Counterclaims.

64. Eolas admits the allegations in paragraph 64 of Office Depot's Answer and Counterclaims.

Jurisdiction and Venue

65. Eolas admits that Office Depot's counterclaims arise under the Patent Laws of the United States, Title 35, United States Code. Eolas admits that the jurisdiction of this court is proper over these counterclaims. Eolas admits that venue is proper in this District, and in the Tyler Division. Except as so admitted, Eolas denies the allegations in paragraph 65 of Office Depot's Answer and Counterclaims.

66. Eolas admits that this Court has personal jurisdiction over it. Except as so admitted, Eolas denies the allegations in paragraph 66 of Office Depot's Answer and Counterclaims.

Count I

Declaratory Judgment of Non-Infringement of the '906 Patent

67. Eolas admits that there is an actual and justiciable controversy between Eolas and Office Depot regarding the infringement of the '906 patent. Except as so admitted, Eolas denies the allegations in paragraph 67 of Office Depot's Answer and Counterclaims.

68. Paragraph 68 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

69. Eolas denies the allegations in paragraph 69 of Office Depot's Answer and Counterclaims.

Count II

Declaratory Judgment of Invalidity of the '906 Patent

70. Paragraph 70 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

71. Eolas admits that there is an actual and justiciable controversy between Eolas and Office Depot regarding the validity of the '906 patent. Except as so admitted, Eolas denies the allegations in paragraph 71 of Office Depot's Answer and Counterclaims.

72. Paragraph 72 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

73. Eolas denies the allegations in paragraph 73 of Office Depot's Answer and Counterclaims.

Count III

Declaratory Judgment of Non-Infringement of the '985 Patent

74. Eolas admits that there is an actual and justiciable controversy between Eolas and Office Depot regarding the infringement of the '985 patent. Except as so admitted, Eolas denies the allegations in paragraph 74 of Office Depot's Answer and Counterclaims.

75. Paragraph 75 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

76. Eolas denies the allegations in paragraph 76 of Office Depot's Answer and Counterclaims.

Count IV

Declaratory Judgment of Invalidity of the '985 Patent

77. Paragraph 77 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

78. Eolas admits that there is an actual and justiciable controversy between Eolas and Office Depot regarding the validity of the '985 patent. Except as so admitted, Eolas denies the allegations in paragraph 78 of Office Depot's Answer and Counterclaims.

79. Paragraph 79 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

80. Eolas denies the allegations in paragraph 80 of Office Depot's Answer and Counterclaims.

OFFICE DEPOT'S REQUESTED RELIEF

Eolas denies that Office Depot is entitled to the relief requested in paragraphs a-g of its Answer and Counterclaims or any other relief on its Counterclaims.

OFFICE DEPOTS' JURY DEMAND

Office Depot's jury demand does not contain a statement which warrants an affirmance or denial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Eolas Technologies Incorporated, prays for the following relief against Defendant Office Depot, Inc.:

- A. that all relief requested by Eolas in its Complaint be granted;
- B. that all relief requested by Office Depot in its Answer and Counterclaims be denied and that Office Depot take nothing by way of its Counterclaims;
- C. that Office Depot be ordered to pay the costs of this action (including all disbursements) and attorney fees as provided by 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; and
- D. such other and further relief as the Court deems just and equitable.

AFFIRMATIVE DEFENSES

As affirmative defenses, Eolas alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Office Depot has failed to state a claim upon which relief can be granted, with respect to each cause of action set forth in its Answer and Counterclaims.

SECOND AFFIRMATIVE DEFENSE

Office Depot has failed to state facts and/or a legal basis sufficient to permit recovery of its attorneys' fees and/or expenses for defending this suit.

OTHER AFFIRMATIVE DEFENSES

Eolas hereby gives notice that it intends to rely upon any other defense that may become available in this case and hereby reserves the right to amend this Answer to assert any such defense.

DEMAND FOR JURY TRIAL

Eolas demands a trial by jury of any and all issues triable of right before a jury.

DATED: June 24, 2010.

Respectfully submitted,

McKool Smith, P.C.

/s/ Mike McKool

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**ATTORNEYS FOR PLAINTIFF
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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 document was served on all counsel who have consented to electronic services on this the 24th day of June, 2010. Local Rule CV-5(a)(3)(A).

/s/ Josh Budwin

Josh Budwin