

Sun Microsystems, Inc.), Staples Inc., Yahoo!, Inc., and YouTube, LLC are collectively referred to as “Moving Defendants.”¹

I.

On February 10, 2010, Moving Defendants filed their Motion to Transfer (dkt. 214). On March 18, 2010, Eolas filed a Motion for Extension of Time Until June 18, 2010 to File its Response to Moving Defendants’ Motion to Transfer (dkt. 241). As stated therein:

Eolas respectfully requests an extension of time of three months to allow it the time needed to take limited discovery related to the venue issue from the twenty-two defendants. This discovery is needed to present the Court with the full factual record required to properly evaluate the venue factors that Moving Defendants’ have put at-issue in their Motion.

Id. at 1. On April 16, 2010, the Court granted Eolas’ Motion in-part, finding:

[T]hat good cause having been shown, the Motion for Extension of Time should be GRANTED in part. Eolas has until June 1, 2010, to respond to the Moving Defendants’ Motion to Transfer to the U.S. District Court for the Northern District of California Pursuant to 28 U.S.C. § 1404(a) (Dkt. 214).

Dkt. 265 at 1.

Prior to the June 1, 2010, date afforded by the Court, Eolas conducted discovery from the twenty-two Defendants related to the venue issues. On June 1, 2010, Eolas filed its Response in Opposition to Moving Defendants’ Motion to Transfer (dkt. 291). Eolas’ Response recited in large part the discovery it took from the Defendants, including depositions from Defendants Adobe, Amazon, Apple, eBay, Google, New Frontier, JP Morgan, Oracle, Yahoo, and YouTube and declarations from Defendants Blockbuster, CDW, Citigroup, Frito-Lay, Go Daddy, J.C. Penney, Office Depot, Perot Systems, Playboy, Rent-A-Center, Staples, and Texas Instruments.

¹ CDW Corporation and J.P Morgan Chase & Co joined the Motion to Transfer on February 11, 2010 (*see* dkt. 215 and dkt. 216). Staples, Inc. joined the Motion to Transfer on June 14, 2010 (*see* dkt 322).

Thereafter, on June 14, 2010—*after* Eolas had completed its venue-related discovery, and *after* the Court-ordered deadline for Eolas’ Reply in Opposition to the Motion to Transfer—Staples joined the Motion to Transfer (dkt. 322). In Staples’ Notice joining the Motion to Transfer, Staples submitted two *new* venue-related declarations. *Id.* These new declarations were executed by Staples employees Paul Van Camp and Joanne Donahue, and were dated *after* the June 1, 2010 deadline for Eolas’ Reply in Opposition to the Motion to Transfer. *See* dkts. 322-1 and 322-2.

On the same day Eolas received Staples’ Notice joining the Motion to Transfer and Staples’ new venue-related declarations, Eolas noticed the depositions of Paul Van Camp and Joanne Donahue. Dkt. 325-2 at 3. In the cover email for Eolas’ service of the deposition notices, Eolas requested that “these depositions take place well in advance of our deadline to file our Sur Reply on the Motion to Transfer.” Dkt. 325-2 at 3. Eolas was hopeful that Staples would agree to provide these depositions in advance of the deadline for Eolas’ Sur Reply in Opposition to the Motion to Transfer (currently due June 28, 2010). Instead of timely providing these depositions, Staples moved for a Protective Order (dkt. 325).

Moving Defendants filed their Reply brief in Support of their Motion to Transfer on June 16, 2010 (dkt. 324). On June 28, 2010, Staples withdrew their Motion for Protective Order (dkt. 345) and has now agreed to provide Paul Van Camp and Joanne Donahue for deposition on July 7, 2010. The current deadline for Eolas’ Sur Reply in Opposition to Moving Defendants’ Motion to Transfer is June 28, 2010. Eolas respectfully requests that the Court grant this Motion and extend the deadline for Eolas to file its Sur Reply to Moving Defendants’ Motion to Transfer until July 9, 2010, two days after Staples has agreed to provide Eolas with these depositions.

Eolas seeks this discovery in order to fully develop the new venue-related issues raised by Staples through its belated joinder to Moving Defendants' Motion to Transfer and its belated submission of venue-related declarations. Eolas intends to include the fruits of this discovery in its Sur Reply in Opposition to Moving Defendants Motion to Transfer.

II.

Eolas hoped to complete this discovery from Staples prior to the date for its Sur Reply, without involving the Court. In the cover email for Eolas' service of the deposition notices, Eolas requested that "these depositions take place well in advance of our deadline to file our Sur Reply on the Motion to Transfer." Dkt. 325-2 at 3. Unfortunately, Staples' Motion for Protective Order, and accompanying delay in providing the noticed deponents, requires the Court's involvement.

III.

This Motion is not made for delay, and should not impact any other deadline applicable to this litigation.

IV.

Accordingly, Eolas respectfully requests that the Court grant this Motion and extend the deadline for Eolas to file its Sur Reply to Moving Defendants' Motion to Transfer until July 9, 2010, two days after Staples has agreed to provide Eolas with the noticed depositions of Paul Van Camp and Joanne Donahue.

Dated: June 28, 2010.

McKool Smith, P.C.

/s/ Mike McKool

Mike McKool

Lead Attorney

Texas State Bar No. 13732100

mmckool@mckoolsmith.com

Douglas Cawley

Texas State Bar No. 04035500

dcawley@mckoolsmith.com

Luke McLeroy

Texas State Bar No. 24041455

lmcleroy@mckoolsmith.com

McKool Smith, P.C.

300 Crescent Court, Suite 1500

Dallas, Texas 75201

Telephone: (214) 978-4000

Telecopier: (214) 978-4044

Sam F. Baxter

Texas State Bar No. 01938000

sbaxter@mckoolsmith.com

McKool Smith, P.C.

104 E. Houston St., Ste. 300

P.O. Box O

Marshall, Texas 75670

Telephone: (903) 923-9000

Telecopier: (903) 923-9095

Kevin L. Burgess

Texas State Bar No. 24006927

kburgess@mckoolsmith.com

Steven J. Pollinger

Texas State Bar No. 24011919

spollinger@mckoolsmith.com

Josh W. Budwin

Texas State Bar No. 24050347

jbudwin@mckoolsmith.com

McKool Smith, P.C.

300 West Sixth Street, Suite 1700

Austin, Texas 78701

Telephone: (512) 692-8700

Telecopier: (512) 692-8744

**ATTORNEYS FOR PLAINTIFF
EOLAS TECHNOLOGIES, INC.**

CERTIFICATE OF CONFERENCE

Counsel for Eolas has conferred with counsel for each of the Defendants regarding the relief requested in this Motion.

Counsel for CDW, Citigroup, Frito-Lay, J.C. Penney, JP Morgan, Office Depot, and Rent-A-Center indicated they are neutral as to this Motion and do not oppose.

Staples stated that it does not oppose this Motion, but Staples has also indicated that it does not agree that discovery against Staples is required for the Motion to Transfer briefing and that it will not agree to any further extensions on the Motion to Transfer briefing for any reason. Eolas does not agree with respect to either of the foregoing.

Counsel for the remaining defendants indicated that they are opposed to the relief requested in this Motion.

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 service. Local Rule CV-5(a)(3)(A) on June 28, 2010.

/s/ Josh Budwin
Josh Budwin