

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

|  |   |                                     |
|--|---|-------------------------------------|
| <b>Eolas Technologies Incorporated,</b>  | § |                                     |
|  | § |                                     |
| <b>Plaintiff,</b>  | § | <b>Civil Action No. 6:09-cv-446</b> |
|  | § |                                     |
| <b>vs.</b>   | § |                                     |
|  | § |                                     |
| <b>Adobe Systems Inc., Amazon.com, Inc.,<br/>Apple Inc., Blockbuster Inc., CDW Corp.,<br/>Citigroup Inc., eBay Inc., Frito-Lay, Inc.,<br/>The Go Daddy Group, Inc., Google Inc.,<br/>J.C. Penney Company, Inc., JPMorgan<br/>Chase &amp; Co., New Frontier Media, Inc.,<br/>Office Depot, Inc., Perot Systems Corp.,<br/>Playboy Enterprises International, Inc.,<br/>Rent-A-Center, Inc., Staples, Inc., Sun<br/>Microsystems Inc., Texas Instruments<br/>Inc., Yahoo! Inc., and YouTube, LLC</b> | § | <b>JURY TRIAL</b>                   |
|  | § |                                     |
| <b>Defendants.</b>   | § |                                     |

**EOLAS’ REPLY TO DEFENDANT TEXAS INSTRUMENTS INCORPORATED’S  
SECOND AMENDED ANSWER TO THE PATENT INFRINGEMENT COMPLAINT OF  
PLAINTIFF EOLAS TECHNOLOGIES INCORPORATED**

Plaintiff Eolas Technologies Incorporated (“Eolas” or “Plaintiff”) hereby replies to the counterclaims set forth in Texas Instruments Incorporated’s (“TI”) Second Amended Answer to the Patent Infringement Complaint (dkt. 321, hereinafter “Answer and Defenses”) as follows:

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

57. Paragraph 57 of TI’s Answer and Defenses does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

58. Eolas denies the allegations in paragraph 58 of TI's Answer and Defenses.

**SECOND AFFIRMATIVE DEFENSE**

59. Paragraph 59 of TI's Answer and Defenses does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

60. Eolas denies the allegations in paragraph 60 of TI's Answer and Defenses.

**THIRD AFFIRMATIVE DEFENSE**

61. Paragraph 61 of TI's Answer and Defenses does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

62. Eolas denies the allegations in paragraph 62 of TI's Answer and Defenses.

**FOURTH AFFIRMATIVE DEFENSE**

63. Paragraph 63 of TI's Answer and Defenses does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

64. Eolas denies the allegations in paragraph 64 of TI's Answer and Defenses.

**FIFTH AFFIRMATIVE DEFENSE**

65. Paragraph 65 of TI's Answer and Defenses does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

66. Eolas denies the allegations in paragraph 66 of TI's Answer and Defenses.

**SIXTH AFFIRMATIVE DEFENSE**

67. Paragraph 67 of TI's Answer and Defenses does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

68. Eolas denies the allegations in paragraph 68 of TI's Answer and Defenses.

**SEVENTH AFFIRMATIVE DEFENSE**

69. Paragraph 69 of TI's Answer and Defenses does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

70. Eolas denies the allegations in paragraph 70 of TI's Answer and Defenses.

**EIGHTH AFFIRMATIVE DEFENSE**

71. Paragraph 71 of TI's Answer and Defenses does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

72. Eolas denies the allegations in paragraph 72 of TI's Answer and Defenses.

73. Eolas admits that the '985 Patent is a continuation of the '906 patent. Eolas denies the remaining allegations in paragraph 73 of TI's Answer and Defenses.

74. Eolas admits that there is a license between Eolas and The Regents of the University of California.

75. Eolas lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 of TI's Answer and Defenses and, on that basis, denies them.

76. Eolas lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 76 of TI's Answer and Defenses, and on that basis, denies them.

77. Eolas lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77 of TI's Answer and Defenses and, on that basis, denies them.

78. Eolas admits that there is a document which purports to contain the following contents as quoted: "Tue, 30 Aug 1994 23:15:10 -0700"; "FYI . . . press release"; "Researchers at the U. of California have created software for embedding interactive program objects within hypermedia documents. Previously, object linking and embedding (OLE) has been employed on single machines or local area networks using MS Windows-TM-. This UC software is the first instance where program objects have been embedded in documents over an open and distributed hypermedia environment such as the World Wide Web on the Internet." Except as so admitted, Eolas denies the allegations in paragraph 78 of TI's Answer and Defenses.

79. Eolas lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 of TI's Answer and Defenses and, on that basis, denies them.

80. Eolas lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 of TI's Answer and Defenses and, on that basis, denies them.

81. Eolas admits that the District Court issued a publicly available ruling (Docket Number 491) in the action (N.D.Ill. 1:99-cv-626) which states:

Doyle created a file to hold all the information he found in 1998 about the Viola browser, and he labeled his file "Viola stuff." The "Viola Stuff" file included descriptions of two "beta" releases of the Viola browser, a version 3.0 release in February 1994, and a version 3.1 release in March 1994. There were public announcements in both cases of Internet addresses where "source and binary" code for the Viola browser could be found. He also found extensive links for various purported "demos" of the Viola browser's capabilities.

The ruling speaks for itself, and thus no further response is required. To the extent a further response is required to paragraph 81 of TI's Answer and Defenses, Eolas answers as follows: denied.

82. Eolas admits that the application for the '906 patent included at least one information disclosure statement. The prosecution history for the '906 patent is publicly available. The publicly available prosecution history speaks for itself, and thus no further response is required. To the extent a further response is required to paragraph 82 of TI's Answer and Defenses, Eolas answers as follows: denied.

83. Eolas admits it filed suit against Microsoft Corporation in a civil action (N.D.Ill. 1:99-cv-626) in 1999.

84. Eolas admits U.S. Patent No. 5,838,906 was issued on November 17, 1998. Eolas admits U.S. Patent No. 5,838,906 underwent two reexaminations: Serial No. 90/006,831 was requested on October 30, 2003 and Serial No. 90/007,858 was requested on December 22, 2005. Eolas admits it filed suit against Microsoft Corporation in 1999. Except as so admitted, Eolas denies the remaining allegations in paragraph 84 of TI's Answer and Defenses.

85. Eolas admits that one or more information disclosure statements were submitted to the Patent Office during reexamination for Serial No. 90/006,831. The publicly available information disclosure statements speak for themselves, and thus no further response is required. To the extent further response is required to paragraph 85 of TI's Answer and Defenses, Eolas answers as follows: denied.

86. Eolas admits a Notice of Intent to Issue a Reexamination Certificate dated January 20, 2006 in reexamination Serial No. 90/006,831 was issued. The prosecution history for the reexamination of the '906 patent is publicly available. The publicly available prosecution history

speaks for itself, and thus no further response is required. To the extent a further response is required to paragraph 86 of TI's Answer and Defenses, Eolas answers as follows: denied.

87. Eolas admits an Office Action dated July 30, 2007 in reexamination Serial No. 90/007858 was issued. The prosecution history for the reexamination of the '906 patent is publicly available. The publicly available prosecution history speaks for itself, and thus no further response is required. To the extent a further response is required to paragraph 87 of TI's Answer and Defenses, Eolas answers as follows: denied.

88. Eolas denies that there is an Interview Summary Action dated July 30, 2007, and on that basis, denies the allegations in paragraph 88 of TI's Answer and Defenses.

89. There is no paragraph 89 of TI's Answer and Defenses thus paragraph 89 does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

90. Eolas admits an Office Action dated April 18, 2008 in reexamination Serial No. 90/007,858 was issued. The prosecution history for the reexamination of the '906 patent is publicly available. The publicly available prosecution history speaks for itself, and thus no further response is required. To the extent a further response is required to paragraph 90 of TI's Answer and Defenses, Eolas answers as follows: denied.

91. Eolas denies the allegations in paragraph 91 of TI's Answer and Defenses.

92. Eolas denies the allegations in paragraph 92 of TI's Answer and Defenses.

### **COUNTERCLAIMS**

93. Paragraph 93 of TI's Answer and Defenses does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

94. Eolas denies the allegations in paragraph 94 of TI's Answer and Defenses.
95. Eolas denies the allegations in paragraph 95 of TI's Answer and Defenses.
96. Eolas denies the allegations in paragraph 96 of TI's Answer and Defenses.
97. Eolas admits the allegations in paragraph 97 of TI's Answer and Defenses.
98. Eolas denies the allegations in paragraph 99 of TI's Answer and Defenses.
99. Eolas denies the allegations in paragraph 99 of TI's Answer and Defenses.
100. Eolas denies the allegations in paragraph 100 of TI's Answer and Defenses.
101. Paragraph 101 of TI's Answer and Defenses does not contain a statement which warrants an affirmation or denial. To the extent any response is warranted, Eolas responds as follows: denied.

#### **TI'S REQUESTED RELIEF**

Eolas denies that TI is entitled to the relief requested in paragraphs 102 – 108 of its Answer and Defenses or any other relief on its Counterclaims.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Eolas Technologies Incorporated, prays for the following relief against Defendant Texas Instruments Incorporated:

- A. that all relief requested by Eolas in its Complaint be granted;
- B. that all relief requested by TI in its Answer and Defenses be denied and that TI take nothing by way of its Counterclaims;
- C. that TI 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**

TI has failed to state a claim upon which relief can be granted, with respect to its Counterclaims set forth in paragraphs 92-100 of its Answer and Defenses.

**SECOND AFFIRMATIVE DEFENSE**

TI 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: July 1, 2010.

Respectfully submitted,

**McKool Smith, P.C.**

/s/ Mike McKool

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 1<sup>st</sup> day of July, 2010. Local Rule CV-5(a)(3)(A).

/s/ Josh Budwin

Josh Budwin