

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

EOLAS TECHNOLOGIES, INC.,

Plaintiff,

vs.

ADOBE SYSTEMS, INC., ET AL.,

Defendants.

Civil Action No. 6:09-cv-446-LED

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AND RELATED COUNTERCLAIMS

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**DEFENDANTS ADOBE SYSTEMS, INC., AMAZON.COM, INC., APPLE INC.,  
BLOCKBUSTER INC., EBAY INC., THE GO DADDY GROUP, INC., GOOGLE  
INC., NEW FRONTIER MEDIA, INC., ORACLE AMERICA, INC. (FKA SUN  
MICROSYSTEMS INC.), PLAYBOY ENTERPRISES INTERNATIONAL, INC.,  
YAHOO! INC., AND YOUTUBE, LLC'S OPPOSITION TO EOLAS'S MOTION  
FOR EXTENSION OF TIME TO FILE SUR REPLY IN OPPOSITION TO  
MOVING DEFENDANTS' MOTION TO TRANSFER [DKT. NO. 346]**

The Moving Defendants<sup>1</sup> oppose any further extensions of time to complete the briefing on the pending Motion to Transfer. The Motion to Transfer was filed on February 10, 2010—almost five months ago. *See* Dkt. No. 214. Eolas has already requested and received three extensions of time with respect to the briefing on this motion, which has caused the adjudication of the Motion to Transfer to be delayed for months. *See* Dkt. Nos. 219, 237, 265. It is time for the briefing to be completed and the motion adjudicated.

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<sup>1</sup> “Moving Defendants” are Adobe Systems, Inc., Amazon.Com, Inc., Apple Inc., Blockbuster Inc., eBay Inc., The Go Daddy Group, Inc., Google Inc., New Frontier Media, Inc., Oracle America, Inc. (fka Sun Microsystems Inc.), Playboy Enterprises International, Inc., Yahoo! Inc., and YouTube, LLC.

The Staples joinder documents do not justify any further extensions of time. Nothing in Moving Defendants' reply brief in support of the Motion to Transfer cites to or discusses in any way factual information related to Staples. *See* Reply [Dkt. No. 324] *passim*. Eolas's surreply is, of course, limited to "responding to issues raised in the reply," and thus there is no basis or need for Eolas to take further venue-related discovery from Staples. L.R. CV-7(f). Even so, Eolas has already obtained from Staples and presented to the Court three different declarations from Staples employees providing factual information that Eolas contends is relevant to the Motion to Transfer. *See* Eolas Opp'n [Dkt. No. 291] Exs. 49A, 49B & 49C. Staples provided these declarations voluntarily to Eolas in reliance on Eolas's agreement to withdraw all venue-related discovery as to Staples. *See* Staples Mot. for Protective Order [Dkt. No. 325] at 3 (citing McTague Decl. Ex. 2). Eolas's agreement with Staples negates any claim that Eolas is entitled to additional venue-related discovery from Staples.

The Moving Defendants contacted Eolas and offered to drop any opposition to this motion for an extension if Eolas would agree not to argue that transfer should be denied because the proceedings in this action are too far along and the Court's investment and familiarity with the case weigh against transfer. *See* Ex. A hereto. Eolas declined. *See id.* To prevent any further prejudice, therefore, the Moving Defendants oppose Eolas's request for an extension of time. *Cf. In re VTech Communications., Inc.*, Misc. No. 909, 2010 WL 46332, at \*2-\*3 (Fed. Cir. Jan. 6, 2010) (denial of transfer motion did not warrant mandamus relief given, *inter alia*, "the advanced stage of discovery and the completion of claim construction").

Dated: July 1, 2010

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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 motion was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 1st day of July, 2010.

/s/Duy D. Nguyen

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