

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

**EOLAS TECHNOLOGIES
INCORPORATED,**

Plaintiff,

vs.

ADOBE SYSTEMS INC., et al.,

Defendants.

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No. 6:09-cv-00446-LED

JURY TRIAL DEMANDED

**JPMORGAN CHASE & CO.’S REPLY MEMORANDUM
IN FURTHER SUPPORT OF ITS MOTION TO DISMISS
EOLAS’S AMENDED INDIRECT INFRINGEMENT CLAIMS**

Eolas correctly notes that there is no requirement for “*detailed* factual support *for each element* of indirect infringement.” (Eolas Resp. in Opp. to Pl. Mot. to Dismiss Indirect Infring. Claims 2, June 24, 2010) (hereinafter, “Eolas’ Opp.”) (emphasis added). However, a complaint containing neither the barest of factual support nor sufficient allegations to make its claims plausible cannot satisfy the requirements under prevailing law.

With respect to the inducement claim, Eolas essentially concedes that its Amended Complaint alleges nothing more than that JPMorgan induces unidentified direct infringers to infringe the asserted patents. (Eolas’ Opp. 2-3.) Eolas does not contend that its Amended Complaint even comes close to alleging, or suggesting facts supporting, either a specific instance of direct infringement or an affirmative intent to cause such an instance of direct infringement. Rather, it appears that Eolas contends that this Court’s prior ruling authorized Eolas to avoid the law’s requirement for specific instances of direct infringement and to ignore the law’s requirement for an affirmative intent to cause direct infringement. Not so, a point quite evident from Eolas’s failure to point to any such authorization.

Likewise, with respect to the contributory infringement claim, Eolas essentially concedes that its Amended Complaint alleges nothing more than that JPMorgan contributes to the direct infringement by unidentified users of “said web pages, software, and computer equipment” *Id.* Eolas does not contend that the sale of a product is alleged, instead pretending that somehow this Court’s prior ruling authorized Eolas to dispense with that crucial requirement, as well as the crucial requirement of no substantial noninfringing use. (Eolas’ Opp. 2-3.) Again, not so, as is evident from Eolas’s failure to point to any such authorization.

The silence of Eolas’s pleading about the above-mentioned fundamental elements of viable claims for inducement of and contributory infringement speaks volumes about the manifest deficiency of Eolas’s pleading. Because Eolas has no defensible position for the failure to come to grips with those requirements, Eolas instead launches a diversionary discussion about requests for reconsideration. But the present motion is not a request for reconsideration. It is a motion to dismiss a deficient Amended Complaint that ignores fundamental elements of a viable claim.

Furthermore, Eolas was also unable to and therefore did not address the motion’s premise that the Amended Complaint is additionally utterly implausible for its failure to address issues of ‘divided infringement’ and ‘authority’. At no point in its reply does Eolas maintain that the Amended Complaint suggests facts plausibly supporting that any webpage user either performs all the claimed method steps or would somehow be “vicariously responsible” for JPMorgan’s performance of some of them. Nor does Eolas’s reply maintain that its pleading suggests facts supporting plausible direct infringement of Eolas’s apparatus claims, which implicate both the client workstation and the remote servers.. Finally, Eolas’s reply ignores the complaint’s failure

to allege that any web page user acted “without authority” to do so, even though a prior litigation resulted in authorizations.

In sum, Eolas’ indirect infringement claims should be dismissed. The Amended Complaint is lacking in its treatment of fundamental elements of indirect infringement and fails to present a plausible claim on which relief can be granted for indirect infringement.

Date: July 6, 2010

Respectfully submitted,

/s/ Trey Yarbrough

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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 this 6th day of July, 2010. All other counsel not deemed to have consented to service in such manner will be served via facsimile transmission and/or first class mail.

/s/ Trey Yarbrough
Trey Yarbrough