

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

Eolas Technologies Incorporated,

Plaintiff,

v.

Adobe Systems Inc., Amazon.com, Inc.,
Apple Inc., Argosy Publishing, 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,

Defendants.

Civil Action No. 6:09-CV-446

JURY TRIAL

**ORACLE AMERICA, INC.'S NOTICE OF JOINDER TO ADOBE SYSTEMS INC.'S
MOTION REQUESTING CASE MANAGEMENT CONFERENCE TO ADDRESS
PLAINTIFF EOLAS'S INFRINGEMENT CONTENTIONS OR, IN THE
ALTERNATIVE, TO STRIKE THOSE CONTENTIONS AND MOTION FOR
EXPEDITED CONSIDERATION**

Defendant Oracle America, Inc. (“Oracle”), formerly known as Sun Microsystems, Inc., hereby joins Adobe Systems Inc.’s (“Adobe”) Opposed Motion Requesting Case Management Conference To Address Plaintiff Eolas’s Infringement Contentions Or, In The Alternative, To Strike Those Contentions And Motion For Expedited Consideration, filed July 16, 2010 (Dkt. 367) and set for hearing on August 31, 2010 (Dkt. 371). Through this joinder, Oracle requests that the Court also address at the August 31, 2010, case management conference the deficient infringement contentions that Plaintiff served on Oracle and to strike those contentions as inadequate.

I. FACTS

On March 5, 2010, Plaintiff Eolas Technologies Inc. (“Eolas”) provided Oracle with its infringement contentions under P.R. 3-1.

On March 26, 2010, Oracle sent Eolas a letter regarding Eolas’s infringement contentions, explaining that, although voluminous, the nearly 1,600 pages of infringement contentions did not identify “specifically where each element of each asserted claim is found within each Accused Instrumentality,” as required by P.R. 3-1. Oracle requested that Eolas provide infringement contentions that specifically identify elements of the asserted claims, such as “embed text format,” “an object external to the first distributed hypermedia document,” “type information associated with [the object],” and “an executable application external to the first distributed hypermedia document.” Oracle also requested that Eolas identify with specificity the browsers that it intends to accuse of infringement.

Eolas replied simply that the claim elements recited above were set forth with sufficient specificity, and that its infringement contentions encompass “any browser for any operating system.”

On July 12, 2010, Oracle met and conferred with Eolas via phone to further discuss Eolas's infringement contentions. During the call, Eolas provided some further information as to what parts of the accused products may correspond to the "[external] object" element of the asserted claims, but Eolas refused to add such specificity to its infringement contentions for that claim element or any others. Eolas also assured Oracle that it would address within approximately two weeks the extent to which its infringement contentions cover Microsoft products, and how they can do so without breaching the *Eolas v. Microsoft* settlement agreement. To date, approximately two weeks later, Eolas has provided Oracle with no guidance on that issue.

Because Eolas refuses to amend its infringement contentions directed to Oracle to include the specificity required by P.R. 3-1, or to acknowledge that Eolas's infringement contentions do not extend to the use of Microsoft browsers or operating systems, Oracle now joins Adobe's motion requesting a case management conference to address Eolas's infringement contentions or, in the alternative, to strike the contentions.

II. ARGUMENT

P.R. 3-1 requires that infringement contentions identify "specifically where each element of each asserted claim is found within each Accused Instrumentality." Like Eolas's infringement contentions to Adobe, however, Eolas's infringement contentions to Oracle are voluminous but severely lacking in specificity. Despite totaling 1,594 pages, the contentions do not provide meaningful insight into where most elements of the asserted claims are found within the accused instrumentalities. (See, e.g., Exhibit A, Eolas's "Claim Chart For Sun Microsystems Showing Infringement Of The '906 Patent By Sun Microsystems' websites," pp. 1-55.) Instead, the contentions merely repeat over and over the same vague screenshots and other excerpts. Even

more egregious, Eolas lists 16 different Java products or components for the preamble of claim 1 (see Ex. B, Eolas's "Claim Chart For Sun Showing Indirect Infringement Of The '906 Patent Through Java and Java FX Authoring Tools And Direct and/or Indirect Infringement via Its Applications To View Java and Java FX Content," pp. 1-4, 15-16), but then fails to explain how most of those products have any relation to the remaining claim limitations or claimed technology in general. Indeed, most do not. Eolas seems to have simply listed every Sun product that includes 'Java' in its name.

Like Adobe, Oracle also is being forced to speculate about the extent to which Eolas is double-dipping by relying on Microsoft products to satisfy the elements of its asserted claims. As explained in Adobe's motion, this information is not discernable from Eolas's infringement contentions. During Oracle's July 12th meet and confer call with Eolas, Eolas assured Oracle that it would address the issue of how and why Microsoft products are encompassed in its infringement contentions within approximately two weeks. As of the date of this joinder, almost two weeks later, Eolas has remained silent on that issue. Therefore, Oracle joins Adobe's motion in seeking that Eolas specifically identify which Microsoft products are encompassed by its infringement contentions, and how those products satisfy each element of each asserted claim.

Correction of the deficiencies in Eolas's infringement contentions described above are necessary for Oracle to properly develop its defenses and take appropriate discovery.

III. CONCLUSION

For the reasons stated above, Oracle joins Adobe's motion regarding Eolas's infringement contentions and requests that the Court address at the currently scheduled August

31, 2010 hearing (Dkt. No. 371) the deficiencies in Eolas's infringement contentions directed at Oracle and order those contentions stricken.¹

July 26, 2010

Respectfully submitted,

/s/ Eric H. Findlay

Eric H. Findlay
State Bar No. 00789886
efindlay@findlaycraft.com
FINDLAY CRAFT, LLP
6760 Old Jacksonville Highway, Suite 101
Tyler, TX 75703
Telephone: (903) 534-1100
Facsimile: (903) 534-1137

Mark D. Fowler (Bar No. CA-124235)
mark.fowler@dlapiper.com
DLA PIPER US LLP
2000 University Avenue
East Palo Alto, CA 94303-2215
Telephone: (650) 833-2000
Facsimile: (650) 833-2001

Kathryn B. Riley (Bar No. CA-211187)
kathryn.riley@dlapiper.com
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 699-2700
Facsimile: (619) 764-6692

**Attorneys for Defendant
ORACLE AMERICA, INC.**

¹ Eolas has represented to Oracle that it is not pursuing joint infringement theories against Oracle, and is instead relying only on direct and indirect infringement theories. On that basis, Oracle is not requesting that Eolas modify its infringement contentions directed to Oracle to include details about joint infringement theories.

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2010, I electronically filed the foregoing filing with the Clerk of Court using the CM/ECF system, which will send notification of such filing via electronic mail to all counsel of record

/s/ Eric H. Findlay
Eric H. Findlay

CERTIFICATE OF CONFERENCE

I hereby certify that, in compliance with Local Rule CV-7(h), counsel for Oracle America, Inc. conferred in good faith with counsel for Eolas Technologies, Inc. on July 12, 2010. Eolas counsel indicated that it would not amend its infringement contentions to provide additional specificity. The July 12, 2010 conference was a long discussion that followed written correspondence on the same issue, as described above.

/s/ Eric H. Findlay
Eric H. Findlay