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

Eolas Technologies Incorporated,	§	
	§	
Plaintiff,	§	**Civil Action No. 6:09-cv-446**
	§	
	§	
vs.	§	
	§	
Adobe Systems Inc., Amazon.com, Inc.,	§	**JURY TRIAL**
Apple 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.	§	

PLAINTIFF EOLAS' RESPONSE IN OPPOSITION TO ORACLE AMERICA INC.'S NOTICE OF JOINDER TO ADOBE SYSTEM INCORPORATED'S OPPOSED MOTION REQUESTING CASE MANAGEMENT CONFERENCE TO ADDRESS PLAINTIFF EOLAS'S INFRINGEMENT CONTENTIONS

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I. INTRODUCTION

Plaintiff Eolas Technologies Inc. ("Eolas") files this response in opposition to Oracle America, Inc.'s Notice of Joinder to Adobe Systems Incorporated's Opposed Motion Requesting Case Management Conference to Address Plaintiff Eolas' Infringement Contentions (Dkt. 372) ("Notice")[1]. Although the Court has ordered a case management conference, Eolas files this Response to address the various complaints raised in Oracle's Notice.

Eolas' infringement contentions with respect to Oracle are detailed and fully comply with the requirements of the Patent Rules. Contrary to Oracle's assertion, and as required by P.R. 3-1(b), Eolas' infringement contentions identify "specifically where each element of each asserted claim in found within each" accused instrumentality. Notice at 2.

As was true of Adobe's Motion, Oracle's complaints related to the scope of the Microsoft license and its defenses of non-infringement, license, implied license, and exhaustion are premature. Eolas' position with respect to Oracle's defenses or license, implied license and exhaustion need not be stated in its infringement contentions.

II. ARGUMENT

A.   Eolas' Infringement Contentions Are Detailed And Fully Comply With The Local Patent Rules

In accordance with P.R. 3-1(c), Eolas' infringement contentions include charts for each accused Oracle product. As shown below, these charts provide, for each element of each asserted claim, a discussion of where the element is found within the accused Oracle product.

Oracle complains that Eolas' infringement contentions did not "specifically identify elements of the asserted claims, such as 'embed text format,' 'an object external to the first

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[1] Sun Microsystems changed its name to "Oracle America, Inc." The terms "Oracle" and "Sun" are therefore used interchangeably herein. *See* Notice at 2.

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distributed hypermedia document,' 'type information associated with [the object],' and 'an executable application external to the first distributed hypermedia document.'"   Notice at 2. Oracle also argues that Eolas fails to identify "where most elements of the asserted claims are found within the accused instrumentalities" and that "the contentions merely repeat over and over the same vague screenshots and other excerpts." Notice at 3.

Neither of these allegations is true. As shown in the excerpts below (with respect to claim 1 of the '906 patent and the infringement chart for "Sun Microsystems' websites"[2]), Eolas specifically identifies—in great detail—each of the elements that Oracle contends are missing from Eolas' contentions. *Id.*

1. Eolas Identifies The "Embed Text Format"

Oracle complains that Eolas has not identified "the embed text format." Notice at 2. Oracle is mistaken. Eolas identifies examples of the embed text formats as the "<embed>" and "<object>" HTML tags on Oracle's web pages. *See, e.g.* Ex. 1 at 70-77. For example, this screenshot shows the source code for the Oracle web page, and it includes both an <embed> and <object> tag:

```
|<OBJECT classid="clsid:D27CDB6E-AE6D-11cf-96B8-444553540000"
codebase="http://download.macromedia.com/pub/shockwave/cabs/flash/swflash.cab#versi
on=5,0,0,0"
 WIDTH=770 HEIGHT=550 id=baseMovie>
 <PARAM NAME=movie VALUE="baseMovie.swf"> <PARAM NAME=loop VALUE=false>
<PARAM NAME=menu VALUE=false> <PARAM NAME=quality VALUE=high> <PARAM
NAME=bgcolor VALUE=#FFFFFF> <EMBED src="baseMovie.swf" loop=false menu=false
quality=high bgcolor=#FFFFFF  WIDTH=770 HEIGHT=550 TYPE="application/x-shockwave-
flash"
PLUGINSPAGE="http://www.macromedia.com/shockwave/download/index.cgi?P1_Prod_Vers
ion=ShockwaveFlash" NAME=baseMovie></EMBED>
</OBJECT>
```

Source: *Line 58-62, Page Source, http://webcast-west.sun.com/interactive/09B01894_51/*
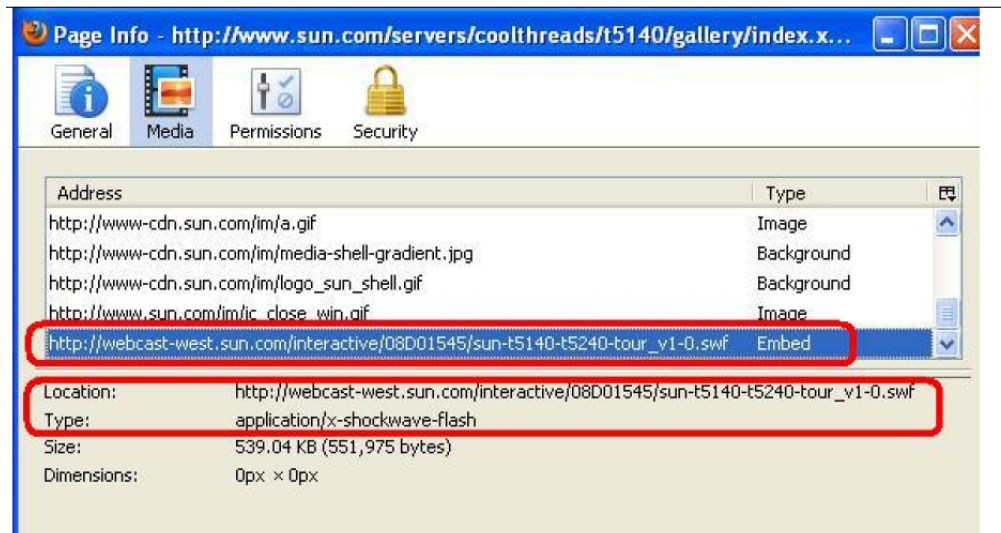
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[2] Eolas has provided infringement charts for each accused Oracle product.

Id. at 74.

### 2. **Eolas Identifies "An Object External To The First Distributed Hypermedia Document"**

Oracle also complains that Eolas has not identified "an object external to the first distributed hypermedia document." Notice at 2. Not so. Eolas' infringement contentions identify various objects external to the first distributed hypermedia document. In this example, the external object is the ".swf" (*i.e.* Flash) file that is "embed[ed]" in the Oracle website. This is shown in the following screenshot:

Source: *Mozilla Firefox -> Tools -> Page Info -> Media,*
http://www.sun.com/servers/coolthreads/t5140/gallery/index.xml?p=1&s=2

Ex. 1 at 84. The url in the "location" identified above shows that the object is located at a location external to the first hypermedia document, shown below, which is located at a different url. *Id*. at 77-90. This external object (denoted by the heavy red lines) is displayed on the Oracle web page as:

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Source: http://www.sun.com/servers/coolthreads/t5140/gallery/index.xml?p=1&s=2
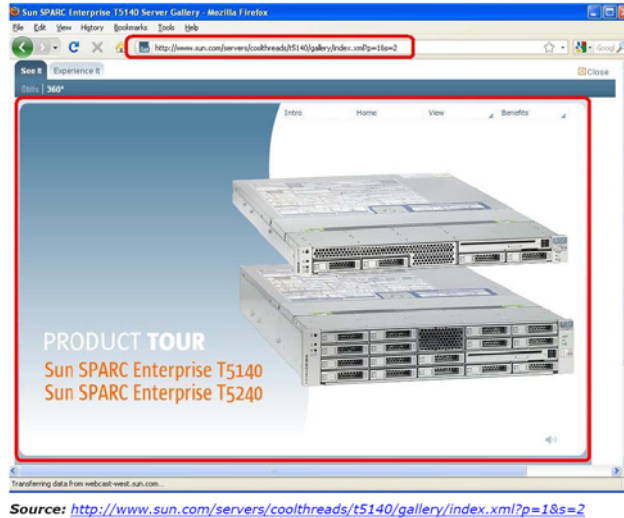
Id. at 85.

3. Eolas Identifies The "Type Information"

Oracle next complains that Eolas has not identified the "type information associated with [the object]." Notice at 2. Again, Oracle is mistaken. *See, e.g.* Ex. 1 at 70-77. For example, this screenshot shows that immediately following the <embed> tag, there is code which specifies the "type information" as "TYPE="application/x-shockwave-flash":

```
<OBJECT classid="clsid:D27CDB6E-AE6D-11cf-96B8-444553540000"
codebase="http://download.macromedia.com/pub/shockwave/cabs/flash/swflash.cab#versi
on=5,0,0,0"
 WIDTH=770 HEIGHT=550 id=baseMovie>
 <PARAM NAME=movie VALUE="baseMovie.swf"> <PARAM NAME=loop VALUE=false>
<PARAM NAME=menu VALUE=false> <PARAM NAME=quality VALUE=high> <PARAM
NAME=bgcolor VALUE=#FFFFFF> <EMBED src="baseMovie.swf" loop=false menu=false
quality=high bgcolor=#FFFFFF  WIDTH=770 HEIGHT=550 TYPE="application/x-shockwave-
flash"
PLUGINSPAGE="http://www.macromedia.com/shockwave/download/index.cgi?P1_Prod_Vers
ion=ShockwaveFlash" NAME=baseMovie></EMBED>
</OBJECT>
```

Source: Line 58-62, Page Source, http://webcast-west.sun.com/interactive/09B01894_51/
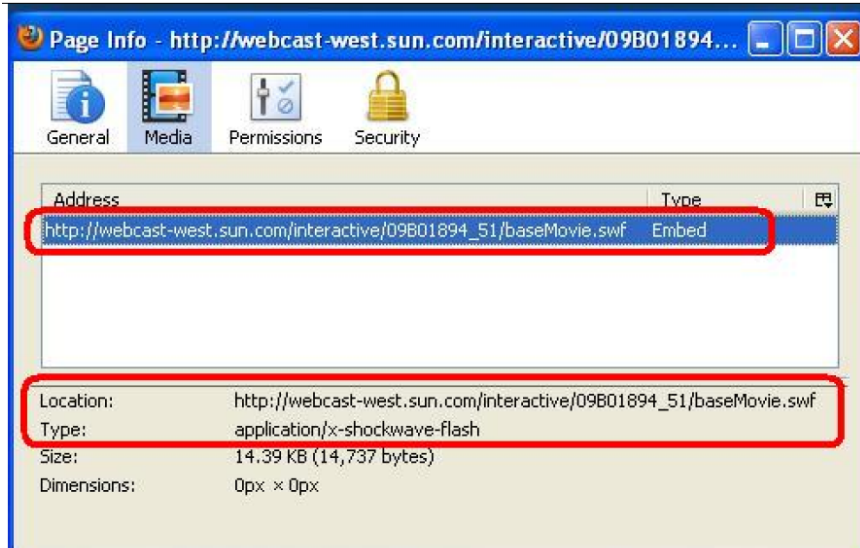
Id. at 74. The chart also provides a screenshot that specifically identifies the "type" as "application/x-shockwave-flash":

Source: *Mozilla Firefox -> Tools -> Page Info -> Media,* *http://webcast-west.sun.com/interactive/09B01894_51/*
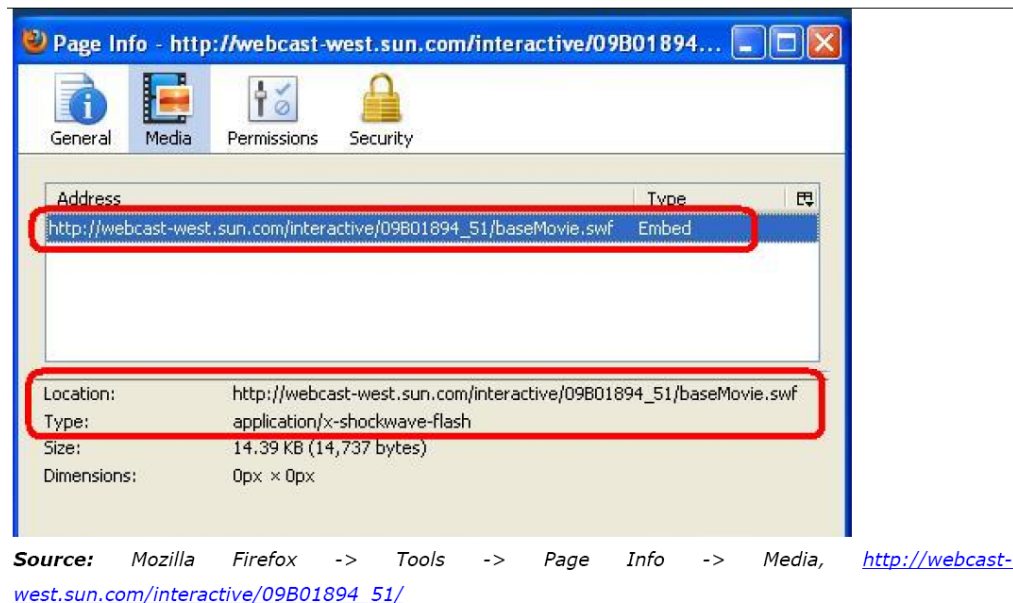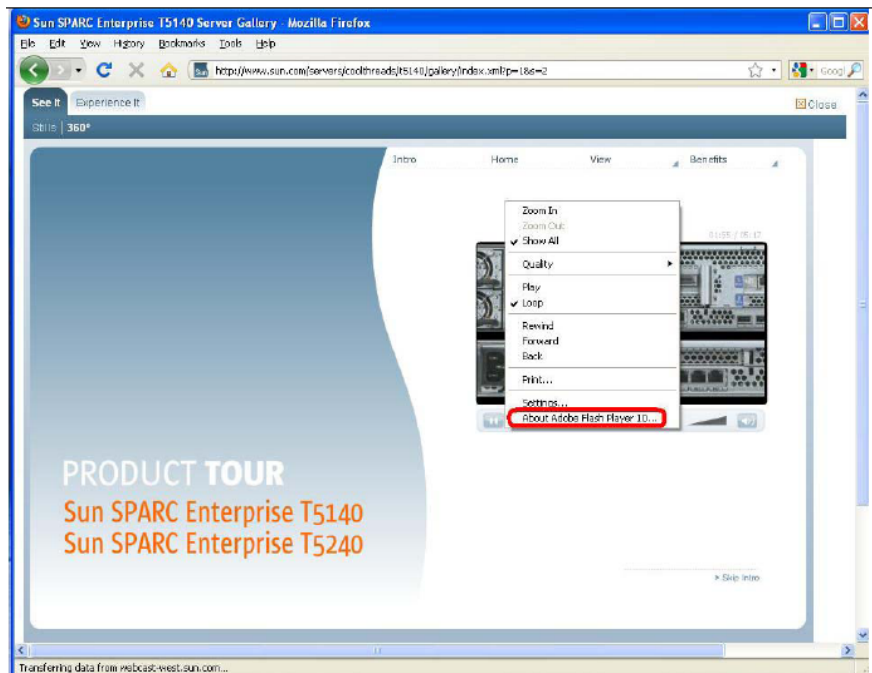
Id. at 76.

4. Eolas Identifies "An Executable Application External To The First Distributed Hypermedia Document"

Finally, Oracle complains that Eolas has not identified "an executable application external to the first distributed hypermedia document." Notice at 2. However, in this example, Eolas' charts identify the executable application external to the first distributed hypermedia document as the Flash player executable application, as indicated by the heavy red boxes in this image:

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Ex. 1 at 76.   This is reinforced by the image below, which shows "Adobe Flash Player 10" as the executable application:

Source: http://www.sun.com/servers/coolthreads/t5140/gallery/index.xml?p=1&s=2

Id. at 5.

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B. Like Adobe, Oracle Should Not Be Permitted To Raise Dispositive Issues Under The Guise Of A Challenge To Eolas' Infringement Contentions

Like Adobe's Motion, Oracle's Notice improperly conflates assertions regarding the sufficiency of Eolas' infringement contentions with whether some of its infringement is excused by virtue of Eolas' license with Microsoft. As such, Eolas incorporates its response to Adobe's Motion, filed on August 2, 2010.

III. CONCLUSION

As set forth above, Eolas' infringement contentions comply with the requirements of the Patent Rules, and Oracle has not shown otherwise.

Dated: August 4, 2010.

McKool Smith, P.C.

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing document were served to all counsel of record via the Court's ECF system.

/s/ Josh Budwin
Josh Budwin