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**
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,	**JURY TRIAL**
Defendants.	

ORACLE AMERICA, INC.'S REPLY BRIEF IN SUPPORT OF ITS NOTICE OF JOINDER TO ADOBE SYSTEMS INC.'S MOTION REQUESTING CASE MANAGEMENT CONFERENCE TO ADDRESS PLAINTIFF <u>EOLAS'S INFRINGEMENT CONTENTIONS</u>

TABLE OF CONTENTS

Defendant Oracle America, Inc. ("Oracle"), formerly known as Sun Microsystems, Inc., files this reply brief in response to Plaintiff's 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 (Dkt. 376) ("Opp.").

I. ARGUMENT

A. Eolas Has Not Identified Which, If Any, Microsoft Products Are Encompassed By Its Infringement Contentions.

Oracle requests that Eolas comply with Patent Rule 3-1 ("P.R. 3-1") and specifically identify which, if any, Microsoft products are encompassed by its infringement contentions and identify how those products satisfy elements of the asserted claims. Oracle's Notice of Joinder (Dkt. 372) ("Notice"), p. 4. In its opposition brief, Eolas distorts the relief Oracle is seeking as a determination of whether "infringement is excused by virtue of Eolas' license with Microsoft." Opp., p. 7. Oracle currently is not seeking such a determination, or any other dispositive relief. Rather, Oracle simply is asking Eolas to comply with the disclosure requirements of P.R. 3-1.

P.R. 3-1 requires Eolas to identify "specifically where each element of each asserted claim is found within each Accused Instrumentality." Eolas's infringement contentions for the accused Oracle products – none of which includes a browser – fall far short of satisfying this requirement, especially with regard to the use of Microsoft products in allegedly infringing combinations with the accused Oracle products. Specifically, nowhere do Eolas's infringement contentions plainly state whether they encompass the use of Microsoft browsers, operating systems, or web servers in allegedly infringing combinations with accused Oracle products (and, if so, which versions of which Microsoft products are implicated and how the claim limitations read on those products). *See*, *e.g*., Notice, Exs. A, B; Opp., Exs. 1A-1D. Recognizing this

1

deficiency in its contentions, Eolas previously assured Oracle that it would tell Oracle by approximately July 26, 2010 whether, how and why Microsoft products are encompassed in its infringement contentions. Notice, p. 4. However, Eolas still has not done so, leaving Oracle to speculate about the extent to which Microsoft products are at issue. Indeed, Eolas's opposition continues to obfuscate the issue by failing to state whether its infringement contentions encompass the use of Microsoft products together with accused Oracle products. Opp. at 1, 7.

Eolas's compliance with P.R. 3-1 in this respect is vital because of the near omnipresent use of Microsoft products with the accused products in this case. For example, at least 75% of the recent visitors to certain accused Oracle web sites used a Microsoft operating system. Accordingly, Eolas's disclosure of the extent to which it is relying on Microsoft products – or competing non-Microsoft products – to satisfy the elements of its asserted claims is of utmost importance to properly frame this case and to allow Oracle to take any necessary discovery and properly prepare its defense. For example, it is important for Oracle to know which Microsoft and non-Microsoft browsers are being relied upon by Eolas as part of an allegedly infringing combination because different browsers operate differently as relevant to the asserted claims.

Moreover, while it is true that any infringement theory against an accused Oracle product that involves the use of licensed Microsoft products would provide an unqualified defense to that claim, as well as constitute a breach of Eolas' agreement with Microsoft – which may be why Eolas does not wish to plainly state on the record whether the Microsoft products are encompassed by its infringement contentions – those issues can be resolved later in this case. The point now is that Oracle is entitled to adequate infringement contentions that include an identification of all browsers, operating systems and web servers, including any such Microsoft products, which Eolas contends play a role in Oracle's alleged infringement.

B.   Eolas Has Not Provided Infringement Charts For Each Accused Java Product.

Oracle also seeks Eolas's compliance with P.R. 3-1 with respect to the accused Oracle Java products, which are the primary targets of Eolas's claims against Oracle. Notably, Eolas's opposition is entirely silent with respect to the accused Java technologies and instead focuses solely on the accused Oracle websites that use co-defendant Adobe's Flash technology.

Eolas claims that it "has provided infringement charts for each accused Oracle product." Opp, p. 2, n. 2. This is simply incorrect at least with respect to the accused Java technologies. Eolas's infringement contentions list *sixteen* different Oracle Java products or components with respect to the preamble of claim 1 alone: (1) "JavaFX SDK"; (2) "NetBeans IDE 6.5.1 for JavaFX 1.2"; (3) "JavaFX Production Suite"; (4) "JavaFX Platform"; (5) "JavaFX Mobile"; (6) "Java Development Toolkit"; (7) "Java Application Verification Kit (AVK) for the Enterprise"; (8) "Java Platform, Enterprise Edition"; (9) "Java Platform, Standard Edition"; (10) "Java SE for Business"; (11) "Java Real-Time System"; (12) "Java Platform, Micro Edition"; (13) "Java Runtime Environment"; (14) "Java Virtual Machine"; (15) "Java Card Technology" and (16) "Java Plug-in." Notice, Ex. B, pp. 1-4, 15-16. However, Eolas has not even attempted to show how most of these products satisfy "each element of each asserted claim" under P.R. 3-1, much less do so in separate infringement charts on a product-by-product basis. For example, how does the accused "Java Card Technology" satisfy any limitation of any asserted claim? Based on Eolas's infringement contentions, Oracle has no idea. *See*, *e.g.*, Notice, Ex. B, pp. 1-92. Indeed, Eolas's entire discussion of the accused "Java Card Technology" is limited to two sentences. Notice, Ex. B, p. 16. Even the supplemental explanation of its infringement charts that Eolas provides in its opposition brief does not answer

3

this question; Eolas addresses only its infringement charts related to the Oracle websites' use of co-defendant Adobe's Flash technology. Opp., pp. 2-6.

C. Eolas's Infringement Charts Lack The Required Specificity.

Eolas's infringement charts for the accused Java technologies contain significantly less detail than the single Flash-based website chart that Eolas cites in its opposition – which may be why Eolas ignores its Java infringement charts in its opposition. For example, Eolas's infringement chart for Java authoring tools cites the following code as supposedly satisfying a claim limitation that recites "an object external to the first distributed hypermedia document":

```
<div id="deployJavaApplet1" style="position: relative; left: 0px;">
<applet           mayscript=""              code="org.jdesktop.applet.util.JNLPAppletLauncher"
archive="webstart/MediaBox.jar,,http://dl.javafx.com/applet-
launcher__V1.2.2_b5.jar,http://dl.javafx.com/javafx-rt-windows-
i586__V1.2.2_b5.jar,http://dl.javafx.com/emptyJarFile-1261527425946__V1.2.2_b5.jar" width="640"
height="360">
<param name="codebase_lookup" value="false">
<param name="subapplet.classname" value="com.sun.javafx.runtime.adapter.Applet">
<param name="progressbar" value="false">
<param name="classloader_cache" value="false">
<param name="MainJavaFXScript" value="com.sun.javafx.mediabox.Main">
<param name="subapplet.displayname" value="appl">
<param name="jnlpNumExtensions" value="1">
<param name="jnlpExtension1" value="http://dl.javafx.com/javafx-rt__V1.2.2_b5.jnlp">
<param name="jnlp_href" value="webstart/MediaBox_browser.jnlp">
<param name="deployJavaAppletID" value="deployJavaApplet1">
<param name="kisawesome" value="true">
</applet>
</div>
```

Notice, Ex. B, p. 50. Does this code contain the recited "object" limitation? If so, what does Eolas believe the "object" is? One of the specified classes? One of the specified .jar files? One or more files contained in a .jar files? If so, which ones? If not, is the "object" something else?

4

Is it multiple things? Eolas provides no explanation, let alone the specific identification required

by P.R. 3-1, and Oracle is unable to divine the answer. Similar deficiencies plague the rest of

Eolas's Java infringement charts.

II.   CONCLUSION

Oracle respectfully requests that the Court address the deficiencies in Eolas's

infringement contentions at the August 31, 2010, case management conference and order those

contentions stricken.

August 16, 2010   Respectfully submitted,

By: */s/ Eric Findlay*_____
Eric Findlay (Bar No. 00789886)
efindlay@findlaycraft.com
Brian Craft (Bar No. 04972020)
bcraft@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

Attorneys for Defendant
ORACLE AMERICA, INC.

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 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 Findlay*_____
Eric Findlay