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

Eolas Technologies Incorporated,	
Plaintiff,	**Case No. 6:09-cv-446-LED**
v.	**JURY TRIAL DEMANDED**
Adobe Systems Inc., et al.,	
Defendants.	

GO DADDY'S NOTICE OF JOINDER TO
## ADOBE'S MOTION FOR CASE MANAGEMENT CONFERENCE

The Go Daddy Group, Inc. ("Go Daddy") 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 (Dkt. 367), which is set for a hearing on August 31, 2010 (Dkt. 371).

Through this joinder, Go Daddy requests that the Court also address at the August 31, 2010, case

management conference the deficient infringement contentions that Eolas served on Go Daddy.

I.

First, Go Daddy submits this Notice to supplement an issue raised by Adobe's motion as

it applies specifically to certain defendants, including Go Daddy and possibly others, who use

server-side Microsoft products. Specifically, each of the servers hosting Go Daddy's accused

websites run Microsoft's Internet Information Services ("IIS") web-server software, use

Microsoft's .NET framework code interpreters, and utilize Microsoft's Windows operating

system. In contrast to Eolas's lack of specificity on the "browser" limitation (as addressed in

Adobe's Motion), Eolas's infringement contentions expressly point to Go Daddy's use of

Microsoft's IIS web-server software as it relates to the "network server" limitation, as shown in

GO DADDY'S NOTICE OF JOINDER TO ADOBE'S MOTION
FOR CASE MANAGEMENT CONFERENCE   **Page 1 of 6**

the following example.

Exemplary Evidence from The Go Daddy Group, Inc.'s websites
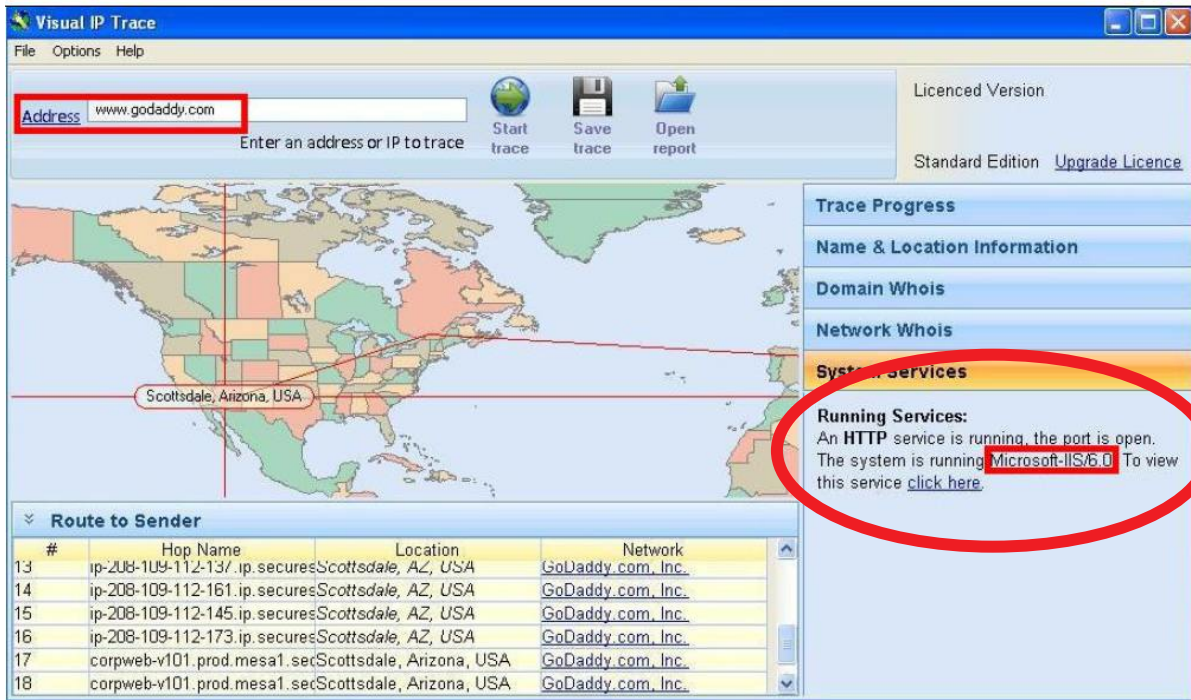
Source: Visualware's Visual IP Trace 2009, http://www.visualiptrace.com/index.html

Excerpt from Eolas's Infringement Contentions against Go Daddy for the '985 Patent
(p. 8; red circle added)

Eolas's inconsistent positions regarding the impact of Microsoft products create significant uncertainty in the scope of Eolas's case. On the one hand, Eolas has highlighted "Microsoft IIS/6.0" in its infringement contentions, suggesting that Eolas <u>is</u> relying on Microsoft server products to satisfy the "network server" limitation. On the other hand, with respect to the "browser" limitation, each page of Eolas's infringement contentions state that Eolas's allegations are not "limited to the browser in use," and Eolas has declined to specify whether it is alleging infringement with respect to Microsoft's Internet Explorer browser. This leaves significant uncertainty as to the impact of Eolas's settlement with Microsoft on the scope of this case. At a meet and confer session, counsel for Eolas indicated that Eolas would soon be filing an Answer to Microsoft's complaint against it in U.S. District Court for the Northern District of Illinois,

which would help clarify Eolas's is position on this issue. Instead of filing an Answer in that case, however, Eolas has filed a motion to dismiss (see Docket Sheet for *Microsoft v. Eolas*, attached hereto as Exhibit A, at Dkt. 32, 34), which gives Go Daddy no information at all.

Eolas cannot have it both ways. Either Eolas has a theory by which it can allege infringement against the use of Microsoft products in a manner that is consistent with the Microsoft license, or it does not. Eolas's inconsistent references to Microsoft products leave Go Daddy (and the other defendants) guessing as to the basis for Eolas's infringement case consistent with its obligations under the Microsoft license.

The local rules are designed such that defendants receive specific guidance on the extent to which plaintiff is contending there is infringement as well as the basis of that infringement. If Eolas is relying upon Microsoft products, it is not clear on what basis that the resulting use constitutes infringement. To make out a case of infringement under 35 U.S.C. § 271, Eolas must show that Go Daddy's alleged infringement was "without authorization." *See, e.g.*, 35 U.S.C. § 271(a). Nothing in Eolas's infringement contentions explains how Go Daddy's lacks authorization based on the terms of Eolas's agreement with Microsoft.

If Eolas is not relying upon Microsoft's products, including Internet Explorer and Microsoft's IIS web-server software, then Eolas has not provided sufficient infringement contentions for Go Daddy to understand the claims against it. It is undisputed that Go Daddy does not provide the "browser" element at issue in each of the claims of the patents-in-suit. Eolas's claims against Go Daddy are either based on some theory of joint infringement, without identifying the relevant actors, or indirect infringement, since it is undisputed that Go Daddy solely is a website provider. Yet Eolas's infringement contentions do provide any such clarity.

II.

Go Daddy, like Adobe, has also received infringement contentions from Eolas that are long on volume (over 540 pages) but short on specifics. As a result, Eolas's infringement contentions against Go Daddy suffer from all the other problems identified in Adobe's motion. Among other things, Eolas's generic approach to the "browser" issue (described above) is inconsistent with the requirements of Local Patent Rule 3-1, which require Eolas to identify each and every combination of accused instrumentality. Go Daddy asks the Court to order Eolas to provide definitive notice of each accused instrumentality that it claims infringes and how, by identifying what other entities' products, services, or actions (including Microsoft's) are allegedly involved.

For these reasons, Go Daddy joins Adobe's Motion.

Dated: August 18, 2010   Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 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/ J. Nicholas Bunch
J. Nicholas Bunch

CERTIFICATE OF CONFERENCE

I hereby certify that, in compliance with Local Rule CV-7(h), counsel for The Go Daddy Group, Inc. conferred in good faith with counsel for Eolas Technologies, Inc. on August 3, 2010. Eolas's counsel indicated that it would not provide the relief requested.

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/s/ J. Nicholas Bunch
J. Nicholas Bunch

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