

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

Eolas Technologies Incorporated,

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Plaintiff,

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Civil Action No. 6:09-cv-446

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vs.

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**Adobe Systems Inc., Amazon.com, Inc.,
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**

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JURY TRIAL

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Defendants.

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**EOLAS' SURREPLY 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**

I. INTRODUCTION

Contrary to Oracle's assertions, Eolas' infringement contentions comply with the Patent Rules. Eolas' infringement contentions are detailed and specific, and serve to put Oracle on notice of Eolas' infringement theories. *See, e.g.*, Dkt. 376 at 2-6. However, Oracle — like Adobe — wants more. As Eolas stated in its Sur Reply in Opposition to Adobe's Motion, Eolas' infringement contentions need not address the issues implicated by Oracle's defenses as they pertain to the Microsoft license. *See* Dkt. 391 at 4-5.

II. ARGUMENT

A. Issues Related To The Microsoft License Are Only Relevant To Oracle's Defenses — Not The Sufficiency Of Eolas' Infringement Contentions.

Oracle rehashes complaints surrounding the absence of any mention of Microsoft products in Eolas' infringement contentions. *See* Dkt. 385 at 1-2. As stated in Eolas' Opposition to Oracle's "notice," issues related to Eolas' license with Microsoft relate solely to Oracle's defenses of license, implied license and exhaustion and not to the sufficiency of Eolas' infringement contentions. Dkt. 376 at 12 (incorporating Eolas' Response in Opposition to Adobe's Motion, Dkt. 375, addressing the same issue). Eolas' infringement contentions are not required to address Oracle's defenses or determine whether any of Oracle's infringement is excused. *See Eon Corp. IP Holdings, LLC v. Sensus USA, Inc.*, No. 6:09-cv-116, 2010 WL 346218, at *2 (E.D. Tex. Jan. 21, 2010) (citing *Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08-cv-144, 2009 WL 2590101, at *5 (E.D. Tex. Aug. 18, 2009) (stating "[i]nfringement contentions are not intended to require a party to set forth a *prima facie* case of infringement and evidence in support thereof")). Nevertheless, as discussed in Eolas' Sur Reply to Adobe's Motion, Eolas has addressed this issue in its August 23, 2010 letter to Oracle and all other defendants. *See* Dkt. 391, Ex. 3. Accordingly, Oracle's complaints with respect to Microsoft are now moot.

B. Eolas Has Provided Infringement Charts For Each Accused Java Product.

With respect to Eolas' infringement chart showing infringement by Oracle's Java Authoring Tools and Players (hereinafter "Java Products"), Oracle argues that Eolas'

infringement contentions are deficient for failing to provide infringement charts for each accused Java Product. This argument either ignores portions of Eolas' infringement contentions or miscomprehends the requirements for indirect infringement allegations under P.R. 3-1.¹

As a threshold matter, Oracle has clouded this issue by grouping all of the accused Java Products from Eolas' infringement contentions together in its Reply. Based on this grouping, it then suggests that Eolas makes the same infringement allegations against all of these products — not so. As Eolas' infringement contentions for these Java Products make clear, with respect to some of these products, Eolas asserts that Oracle infringes both “directly and indirectly” (Dkt. 372, Ex. B at 15) and with respect to others, Eolas asserts only that Oracle “indirectly” infringes (*id.* at 1). The title of the infringement contention chart for these Java Products makes this plain. *See id.* (“Claim Chart For Sun Showing *Indirect Infringement* Of The '906 Patent Through Java and JavaFX Authoring Tools and *Direct and/or Indirect Infringement* via Its Applications to View Java and JavaFX Content”) (emphasis added). Eolas has thus stated its infringement theories as to both sets of products.

1. Eolas' Infringement Contentions Put Oracle On Notice That It Is Accused Of Indirect Infringement Through Its Java and JavaFX Authoring Tools.

As stated in Eolas' infringement contentions for the Java Products, Eolas contends that Oracle's Java and JavaFX Authoring Tools indirectly infringe the asserted claims.² Because these products are accused solely of indirect infringement, Oracle's argument as to the deficiency

¹ Oracle also argues that Eolas' infringement contentions are deficient for failing to specify where each asserted claim is found within each Accused Instrumentality, specifically noting none of Oracle's products includes a browser. Dkt. 385 at 1. As Eolas pointed out in response to Adobe's similar argument, just because Oracle does not make a browser does not mean that it is not directly liable for its own use of its infringing technology with a browser or indirectly liable for others' use of Oracle's infringing technology with a browser. *See* Dkt. 391 at 2.

² The Java and JavaFX Authoring Tools specifically identified by Eolas in its infringement charts are (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”; and (12) “Java Platform, Micro Edition.” Dkt. 372, Ex. B at 1-4. Of the sixteen Java Products that Oracle mentions in its Reply, these are the first twelve. Dkt. 385 at 3.

in the infringement contentions for these products misses the mark. *See Fenner Invs., Ltd. v. Hewlett-Packard Co.*, No. 6:08-CV-273, 2010 U.S. Dist. LEXIS 17536, at *7-8 (E.D. Tex. Feb. 26, 2010) (Love, J.) (holding “Defendants assertion that P.R. 3-1 requires explicit disclosure of inducement allegations in the infringement contentions is incorrect.”).

The inclusion of these authoring tools in the infringement contentions puts Oracle on notice of Eolas’ infringement theories. *See Connectel, L.L.C. v. Cisco Systems, Inc.*, 391 F. Supp. 2d 526, 527-28 (E.D. Tex. 2005) (Davis, J.) (explaining PICs must set forth “particular theories of infringement with sufficient specificity to provide defendants with notice of infringement beyond that which is provided by the mere language of the patent [claims] themselves”). Eolas provides a list of the twelve Java and JavaFX Authoring Tools together with descriptions of how these authoring tools implicate indirect infringement. *See* Dkt. 372, Ex. B at 1-4. These descriptions serve the notice function of the patent rules. *See Forgent Networks, Inc. v. Echostar Techs. Corp.*, No. 6:06-cv-208, 2006 U.S. Dist. LEXIS 88872, at *16 (E.D. Tex. Dec. 7, 2006) (Davis, J.) (noting that plaintiff’s infringement contentions were unhelpful because “[t]here is no explanation in this paragraph of how [defendant’s] software causes indirect infringement.”).

2. *Eolas’ Infringement Contentions Put Oracle On Notice That It Is Accused Of Direct And Indirect Infringement Through Its Java Runtime Environment, Virtual Machine, and Plug-in Products.*

As stated in Eolas’ infringement contentions for the Java Products, Eolas contends that the four “Applications to View Java and JavaFX Content” infringe “directly and indirectly” and do so “alone or in combination with Java and/or JavaFX authoring tools.” Dkt. 372, Ex. B at 1, 15. The Java Runtime Environment, Java Virtual Machine, Java Plug-in, and Java Card Technology are players or software on a user’s computer or mobile device which allow that user to view and interact with embedded Java or JavaFX content on a web page. *See, e.g.*, Dkt. 372, Ex. B at 4-16. For example, as the discussion for claim 1 of the ’985 patent makes clear: Oracle is directly liable for infringement associated with the use of this software on a user’s computer or

mobile device when the user is an Oracle employee. Oracle is indirectly liable when the user is a person other than an Oracle employee.

Oracle's Reply asks "how does the accused 'Java Card Technology' satisfy any limitation of any asserted claim?" Dkt. 385 at 3. Though discovery is ongoing, Eolas responds that the Java Card Technology is designed to run on devices with limited memory and processing capabilities.³ Just like each of the accused Java Virtual Machine, Java Runtime Environment, and Java Plug-in software products allow Java applications to run on devices with greater memory and processing capabilities — the accused Java Card Technology allows devices with lesser memory and processing power (such as mobile phones) to run Java applications.

C. Eolas' Infringement Contentions Specify The Bounds Of Oracle's Infringement.

As discussed in Eolas' infringement contentions for Oracle products and software in addition to the Java Products, Eolas contends that Oracle directly infringes via both its use of Java technology on its own web pages as well as via its use of Adobe's Flash technology on its web pages. Eolas' infringement contentions provide evidence to support both contentions. *See, e.g.,* Dkt. 372, Ex A at 1-5 (Java); Dkt. 376, Ex. A at 1-23 (Flash). In its opening "notice," Oracle generically complained about various things lacking from Eolas' infringement contentions. Ex. 372 at 3-4. Eolas addressed, and refuted, those generic complaints with a specific example related to Oracle's use of Adobe's Flash technology. Dkt. 376 at 1-6. Oracle now complains that Eolas failed to specify Oracle's infringement via its use of its own Java technology. Dkt. 385 at 3. Eolas responds — in the limited space afforded — to that complaint.

Oracle asserts, with respect to Java technology on Oracle's web pages that Eolas' infringement chart fails to specify the "object" required by the asserted claims. *See* Dkt. 385 at 4. Not so. In the example Oracle complains of, the <applet> tag is the embed text format. Dkt. 372, Ex. B at 50; *see also id.* at 59 (citing an Oracle web page which states that Oracle

³ *See* Java Card Technology Overview, available at <http://www.oracle.com/technetwork/java/javacard/overview/index.html> (stating "Java Card technology provides a secure environment for applications that run on smart cards and other devices with very limited memory and processing capabilities.").

“recommends that you continue to use the applet tag as a consistent way to deploy Java applets across browsers on all platforms”). In turn, this embed text format “specifies the location of at least a portion of the object.” ’906 Patent claim 1. Between the open “<applet>” tag and the close “</applet>” tag are pieces of code which are used to specify the location of the Java applet (*i.e.* the object) and parameters related to it. The first part identifies the “JNLPAppletLauncher.” The “JNLP-based applet launcher” is used “for deploying applets.” See <https://applet-launcher.dev.java.net/>. Various parameters related to the Java applet are passed into the “JNLPAppletLauncher.” *Id.* The parameters include the files needed to display the Java applet on the web page (denoted by the list of file paths for the “.jar” files appearing between the quotes following the “archive=”) and those denoted the various “<param name=” values. Dkt. 372, Ex. B at 50. The Java applet specified by these values is the object displayed on the web page, with which the user can interact. This is clearly demonstrated; one of the “.jar” files is named “MediaBox.jar” and the screenshot immediately proceeding this code in Eolas’ infringement contention chart shows an embedded, interactive Java object called “JavaFX MediaBox Player For Streaming Video”:



Id. at 49 (red box added). Accordingly, and contrary to Oracle’s contention, Eolas’ infringement contentions specify the object — and the other claim elements — in great detail.

III. CONCLUSION

Eolas’ infringement contentions comply with the requirements of the Patent Rules and Oracle is on notice of what it must defend. The Court need not take any remedial action.

Dated August 26, 2010.

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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
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