

Highly Confidential - Outside Counsel Eyes' Only

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

Eolas Technologies Incorporated,	§	
	§	
Plaintiff,	§	Civil Action No. 6:09-CV-00446-LED
	§	
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.	§	

**EOLAS' JANUARY 7, 2011 SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
DEFENDANT ADOBE'S SPECIAL INTERROGATORIES TO PLAINTIFF EOLAS
TECHNOLOGIES INC. (NOS. 1-5)**

Plaintiff Eolas Technologies Incorporated ("Eolas") hereby supplements its responses and objections to the Special Interrogatories (Nos. 1-5) ("Special Interrogatories") served by Defendant Adobe Systems, Inc. ("Adobe") in the above-captioned matter as follows:

PRELIMINARY STATEMENT

Eolas' objections and responses to the Special Interrogatories are made without in any way waiving: (1) the right to object on the grounds of competency, relevance, materiality, hearsay or any other proper ground, to the use of the information provided in these responses for any purpose, in whole or in part, in any subsequent stage or proceeding in this or any other

For claims 1, 4, 5, 6, 9 and 10 of the '906 patent and claims 1, 16 and 36 of the '985 patent, Eolas contends that the browser “performs” the claim language identified by Adobe and/or other “similar” language in the foregoing claims.

Discovery is ongoing, and Eolas reserves the right to supplement its response to this Interrogatory based on information learned in discovery.

SPECIAL INTERROGATORY NO. 2:

For each Adobe accused instrumentality, identify and explain how each file, function, and supporting lines of source code for each operating system (e.g. Microsoft XP) either performs or assists in performing the following claim language:

enabling an end-user to directly interact with an object by utilizing said executable application to interactively process said object while the object is being displayed within a display area created at a first location within a portion of a hypermedia document being displayed in a browser-controlled window, wherein said network environment is a distributed hypermedia environment, wherein said client workstation receives, over said network environment from said server, at least one file containing information to enable said browser application to display, on said client workstation, at least said portion of said distributed hypermedia document within said browser-controlled window, wherein said executable application is external to said file, wherein said client workstation executes the browser application, with the browser application responding to text formats to initiate processing specified by the text formats, wherein at least said portion of the document is displayed within the browser-controlled window, wherein an embed text format which corresponds to said first location in the document is identified by the browser, wherein the embed text format specifies the location of at least a portion of said object external to the file, wherein the object has type information associated with it, wherein the type information is utilized by the browser to identify and locate said executable application, and wherein the executable application is automatically invoked by the browser, in response to the identifying of the embed text format

To the extent your infringement theory is different for similar language in other asserted claims, specify how your theory is different for those claims.

RESPONSE TO SPECIAL INTERROGATORY NO. 2:

In addition to the foregoing general objections which are incorporated herein, Eolas specifically objects to this interrogatory to the extent that it seeks information that is not in its possession, custody, or control. Specifically, Eolas objects to this interrogatory to the extent that it seeks information solely in the possession, custody or control of Adobe, third-parties and/or other defendants in the above-captioned action that has yet to be produced or provided to Eolas. Discovery is ongoing, and expert discovery has yet to begin. Eolas further objects to the interrogatory in that it is premature in view of the expert discovery provisions of the local rules and the Court's orders.

Subject to the foregoing general and specific objections, Eolas responds as follows:

Eolas' contentions do not rely on the operating system for performing the claim language identified by Adobe in its Special Interrogatory No. 2.

Discovery is ongoing, and Eolas reserves the right to supplement its response to this Interrogatory based on information learned in discovery.

**JANUARY 7, 2011 SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY
NO. 2:**

In addition to the foregoing general objections which are incorporated herein, Eolas specifically objects to this interrogatory to the extent that it seeks information that is not in its possession, custody, or control. Specifically, Eolas objects to this interrogatory to the extent that it seeks information solely in the possession, custody or control of Adobe, third-parties and/or other defendants in the above-captioned action that has yet to be produced or provided to Eolas. Discovery is ongoing, and expert discovery has yet to begin. Eolas further objects to the interrogatory in that it is premature in view of the expert discovery provisions of the local rules

and the Court's orders. Eolas objects to the phrase "assists in performing" as vague, ambiguous and undefined.

Subject to the foregoing general and specific objections, and incorporating its initial response herein, Eolas supplements its response as follows:

For claims 1, 4, 5, 6, 9 and 10 of the '906 patent and claims 1, 16 and 36 of the '985 patent, Eolas contends that the operating system does not "perform" the claim language identified by Adobe and/or other "similar" language in the foregoing claims. As explained in Eolas' initial response, Eolas' contentions do not rely on the operating system for performing the claim language identified by Adobe in its Special Interrogatory No. 2.

For claims 24 and 28 of the '985 patent, Eolas contends that the operating system does not "perform" the claim language identified by Adobe and/or other "similar" language in the foregoing claims. As explained in Eolas' initial response, Eolas' contentions do not rely on the operating system for performing the claim language identified by Adobe in its Special Interrogatory No. 2.

For claims 20, 32, 40 and 44 of the '985 patent, Eolas contends that the operating system does not "perform" the claim language identified by Adobe and/or other "similar" language in the foregoing claims. As explained in Eolas' initial response, Eolas' contentions do not rely on the operating system for performing the claim language identified by Adobe in its Special Interrogatory No. 2.

Discovery is ongoing, and Eolas reserves the right to supplement its response to this Interrogatory based on information learned in discovery.

SPECIAL INTERROGATORY NO. 3:

Discovery is ongoing, and Eolas reserves the right to supplement its response to this Interrogatory based on information learned in discovery.

SPECIAL INTERROGATORY NO. 5:

For each patent claim for which you allege there is liability for Adobe, identify by manufacturer number, make, and product number the software and hardware that satisfies the claim limitations (whether provided by Adobe or any other person or entity) and all other persons, entities and things that allegedly directly infringe, induce infringement, contributorily infringe, and jointly infringe the identified combination of software and hardware.

RESPONSE TO SPECIAL INTERROGATORY NO. 5:

In addition to the foregoing general objections which are incorporated herein, Eolas specifically objects to this interrogatory to the extent that it seeks information that is not in its possession, custody, or control. Specifically, Eolas objects to this interrogatory to the extent that it seeks information solely in the possession, custody or control of Adobe, third-parties and/or other defendants in the above-captioned action that has yet to be produced or provided to Eolas. Discovery is ongoing, and expert discovery has yet to begin. Eolas further objects to the interrogatory in that it is premature in view of the expert discovery provisions of the local rules and the Court's orders.

Subject to the foregoing general and specific objections, Eolas responds as follows:

For claims 1, 4, 5, 6, 9, and 10 of the '906 patent and claims 1, 16, 36 of the '985 patent (and their dependents):

Eolas contends that, as set forth in its infringement contentions for these claims for the Adobe Accused Instrumentalities, that any user of any of the Adobe Accused Instrumentalities

directly infringes the asserted claims of the patents-in-suit via the utilization of any software and/or hardware that comprises a web browser, so long as the web browser is not Microsoft Internet Explorer. When that user is an Adobe employee Adobe is directly liable for that infringement. When that user is a person other than Adobe employee, Adobe is indirectly liable for induced and/or contributory infringement.

For claims 4, 5, 9 and 10 of the '906 patent and 20, 32, 40 and 44 of the '985 patent (and their dependents):

Eolas contends that, as set forth in its infringement contentions for these claims for the Adobe Accused Instrumentalities, Adobe is directly liable for providing (*i.e.* making, using, selling and/or offering to sell) the Accused Instrumentalities via any software and/or hardware that comprises a web server, so long as the web server is not a Microsoft product.

For claims 1, 4, 5, 9 and 10 of the '906 patent (and their dependents):

Eolas contends that, as set forth in its infringement contentions for these claims for the Adobe Accused Instrumentalities, Adobe is directly liable for providing (*i.e.* making, using, selling and/or offering to sell) the Accused Instrumentalities as browser plug-ins for any hardware or software.

Discovery is ongoing, and Eolas reserves the right to supplement its response to this Interrogatory based on information learned in discovery.

JANUARY 7, 2011 SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY

NO. 5:

In addition to the foregoing general objections which are incorporated herein, Eolas specifically objects to this interrogatory to the extent that it seeks information that is not in its possession, custody, or control. Specifically, Eolas objects to this interrogatory to the extent that

it seeks information solely in the possession, custody or control of Adobe, third-parties and/or other defendants in the above-captioned action that has yet to be produced or provided to Eolas. Discovery is ongoing, and expert discovery has yet to begin. Eolas further objects to the interrogatory in that it is premature in view of the expert discovery provisions of the local rules and the Court's orders.

Subject to the foregoing general and specific objections, and incorporating its initial response herein, Eolas supplements its response as follows:

For claims 1, 4, 5, 6, 9, and 10 of the '906 patent and claims 1, 16, 36 of the '985 patent (and their dependents):

Eolas contends that, as set forth in its infringement contentions for these claims for the Adobe Accused Instrumentalities, that any user of any of the Adobe Accused Instrumentalities directly infringes the asserted claims of the patents-in-suit via the utilization of any software and/or hardware that comprises a web browser, **so long as the web browser is not Microsoft Internet Explorer.** When that user is an Adobe employee Adobe is directly liable for that infringement. When that user is a person other than Adobe employee, Adobe is indirectly liable for induced and/or contributory infringement.

For claims 4, 5, 9 and 10 of the '906 patent and 20, 32, 40 and 44 of the '985 patent (and their dependents):

Eolas contends that, as set forth in its infringement contentions for these claims for the Adobe Accused Instrumentalities, Adobe is directly liable for providing (*i.e.* making, using, selling and/or offering to sell) the Accused Instrumentalities via any software and/or hardware that comprises a web server, **so long as the web server is not a Microsoft product.**

For claims 24 and 28 of the '985 patent (and their dependents):

Eolas contends that, as set forth in its infringement contentions for these claims for the Adobe Accused Instrumentalities, Adobe is directly liable for providing (*i.e.* making, using, selling and/or offering to sell) the Accused Instrumentalities as browser plug-ins for any hardware or software.

Discovery is ongoing, and Eolas reserves the right to supplement its response to this Interrogatory based on information learned in discovery.

Dated: January 7, 2011

McKool Smith, P.C.

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served via electronic mail on all counsel of record on this the 7th day of January 2011.

/s/ Josh Budwin

Josh Budwin