UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Eolas Technologies Incorporated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 6:09-cv-446
	)	Judge Leonard E. Davis
Adobe Systems Inc., Amazon.com, Inc.,	)	
Apple Inc., Argosy Publishing, Inc.,	)	
Blockbuster Inc., CDW Corp., Citigroup	)	
Inc., eBay Inc., Frito-Lay, Inc., The Go	)	**JURY TRIAL DEMANDED**
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.	)	
	)	

DEFENDANT CDW LLC'S THIRD ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT, DEFENSES AND COUNTERCLAIMS

Defendant CDW LLC ("CDW"),[1] by its attorneys, Marshall, Gerstein & Borun LLP and Findlay Craft LLP, hereby submits its Third Answer, Defenses and Counterclaims to the First Amended Complaint and Demand for Jury Trial of Plaintiff Eolas Technologies Incorporated ("Eolas").

I.   PARTIES

1.   Plaintiff Eolas is a corporation organized and existing under the laws of Texas, with its principal place of business at 313 East Charnwood Street, Tyler, Texas 75701.

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[1] On December 31, 2009, "CDW Corporation" merged into CDWC LLC, an Illinois limited liability company, and the name of CDWC LLC was changed to "CDW LLC" as of that date. *See* D.I. 270.

Eolas conducts leading-edge research and development to create innovative technologies in the areas of interactive embedded and distributed applications, systems, data analysis, visualization, collaboration and networking. During the past 15 years, Eolas' innovations have enabled corporations around the world to enhance their products and improve their customers' website experiences by enabling browsers, in conjunction with servers, to act as platforms for fully interactive embedded applications. This advanced technology provides rich interactive online experiences for Web users worldwide.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

2. Upon information and belief, Adobe is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 345 Park Avenue, San Jose, California 95110-2704. Adobe may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC, 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

3. Upon information and belief, Amazon is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1200 12th Avenue South, Suite 1200, Seattle, Washington 98144-2734. Amazon may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC, 6500 Harbour Heights Parkway, Mukilteo, Washington 98275.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

4. Upon information and belief, Apple is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of California, with its principal place of business at 1 Infinite Loop, Cupertino, California 95014-2083. Apple may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

5.   Upon information and belief, Blockbuster is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1201 Elm Street, Suite 2100, Dallas, Texas 75270-2102. Blockbuster may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC, 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

6.   Upon information and belief, CDW is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Illinois, with its principal place of business at 200 North Milwaukee Avenue, Vernon Hills, Illinois 60061. CDW may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC, 2730 Gateway Oaks Drive, Suite 100, Sacramento, California 95833-3503.

ANSWER: CDW is an Illinois corporation having a principal place of business at 200 N. Milwaukee Avenue, Vernon Hills, IL 60061. CDW admits that Corporation Service Company is its registered agent for service.

7.   Upon information and belief, Citigroup is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 399 Park Avenue, New York, New York 10043. Citigroup may be served with process by serving its registered agent, CT Corporation System, 350 North Saint Paul Street, Dallas, Texas 75201-4240.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

8.   Upon information and belief, eBay is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 2145 Hamilton Avenue, San Jose, California 95125-5905. eBay may be served with process by serving its registered agent, National Registered Agents, Inc., 16055 Space Center Boulevard, Suite 235, Houston, Texas 77062-6212.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

9.   Upon information and belief, Frito-Lay is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 7701 Legacy Drive, Plano, Texas 75024-4002. On information and belief, Frito-Lay is a subsidiary of PepsiCo Inc. with its principal place of business at 700 Anderson Hill Road, Purchase, New York 10577-1401. Frito-Lay may be served with process by serving its registered agent, CT Corporation System, 350 North Saint Paul Street, Dallas, Texas 75201-4240.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

10.   Upon information and belief, Go Daddy is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Arizona, with its principal place of business at 14455 North Hayden Road, Suite 226, Scottsdale, Arizona 85260. Go Daddy may be served with process by serving its registered agent, Barb Rechterman, 14455 North Hayden Road, Suite 219, Scottsdale, Arizona 85260-6993.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

11.   Upon information and belief, Google is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC, 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

12.   Upon information and belief, J.C. Penney is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 6501 Legacy Drive, Plano, Texas 75024-3612. J.C. Penney may be served with process by serving its registered agent, CT Corporation System, 350 North Saint Paul Street, Dallas, Texas 75201-4240.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

13.   Upon information and belief, JPMorgan Chase is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 270 Park Avenue, New York, New York 10017. JPMorgan Chase may be served with process by serving its registered agent, CT Corporation System, 350 North Saint Paul Street, Dallas, Texas 75201-4240.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

14.   Upon information and belief, New Frontier Media is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Colorado, with its principal place of business at 7007 Winchester Circle, Suite 200, Boulder, Colorado 80301-3505. New Frontier Media may be served with process by serving its registered agent, Marc Callipari, 7007 Winchester Circle, Suite 200, Boulder, Colorado 80301-3517.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

15.   Upon information and belief, Office Depot is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 2200 Old Germantown Road, Delray Beach, Florida 33445-8223. Office Depot may be served with process by serving its registered agent, Corporate Creations Network Inc., 4265 San Felipe Street, Suite 1100, Houston, Texas 77027-2998.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

16.   Upon information and belief, Perot Systems is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 2300 West Plano Parkway, Plano, Texas 75075-8499. Perot Systems may be served with process by serving its registered agent, CT Corporation System, 350 N. Saint Paul Street, Dallas, Texas 75201-4240.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

17.   Upon information and belief, Playboy is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 680 North Lake Shore Drive, Chicago, Illinois 60611.   Playboy may be served with process by serving its registered agent, CT Corporation System, 111 8th Avenue, New York, New York 10011-5201.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

18.   Upon information and belief, Rent-A-Center is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 5501 Headquarters Drive, Plano, Texas 75024. Rent-A-Center may be served with process by serving its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

19.   Upon information and belief, Staples is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 500 Staples Drive, Framingham, Massachusetts 01702. Staples may be served with process by serving its registered agent, CT Corporation System, 155 Federal Street, Suite 700, Boston Massachusetts 02110-1727.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

20.   Upon information and belief, Sun Microsystems is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 4150 Network Circle, Santa Clara, California 95054.   Sun Microsystems may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC - Lawyers Incorporating Service, 2730 Gateway Oaks Drive, Suite 100, Sacramento, California 95833-3503.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

21.   Upon information and belief, Texas Instruments is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of

Delaware, with its principal place of business at 12500 TI Boulevard, Dallas, Texas 75243-4136. Texas Instruments may be served with process by serving its registered agent, Joseph F. Hubach, 7839 Churchill Way, MS 3999, Dallas, Texas 75251-1901.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

22. Upon information and belief, Yahoo is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 701 1st Avenue, Sunnyvale, California 94089. Yahoo may be served with process by serving its registered agent, CT Corporation System, 818 W. 7th Street, Los Angeles, California 90017-3407.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

23. Upon information and belief, YouTube, LLC is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043-1351. YouTube, LLC may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC, 2730 Gateway Oaks Drive Suite 100, Sacramento, CA 95833.

ANSWER: No answer from CDW is required. CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

II. JURISDICTION AND VENUE

24. Plaintiff repeats and re-alleges the allegations in Paragraphs 1–23 as though fully set forth in their entirety.

ANSWER: CDW repeats and re-states its answers to Paragraphs 1-23 as though set forth in their entirety.

25. This action arises under the patent laws of the United States, Title 35, United States Code § 1, *et seq*. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

ANSWER: CDW admits that Plaintiff's First Amended Complaint purports to state causes of action under the United States patent laws and that, therefore, the Court

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has subject matter jurisdiction over Plaintiff's claims. CDW otherwise denies the allegations of this paragraph, and specifically denies any infringement of any valid and enforceable claim of the patents identified in Paragraph 29.

26.   Personal jurisdiction exists generally over each of the Defendants because each has sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within the Eastern District of Texas. Personal jurisdiction also exists specifically over each of the Defendants because each, directly or through subsidiaries or intermediaries, makes, uses, offers for sale, sells, imports, advertises, makes available and/or markets products and services within the State of Texas, and more particularly, within the Eastern District of Texas, that infringe the patents-in-suit, as described more particularly below.

ANSWER: To the extent this allegation applies to CDW, CDW admits that it has transacted business within this District, but otherwise denies the allegations of this paragraph and, in particular, denies that it has committed acts of infringement. To the extent this allegation applies to other Defendants, no answer from CDW is required, and CDW is without knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies the same.

27.   Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391(b)–(c) and 1400(b).

ANSWER: CDW denies the allegations of this paragraph.

III.   PATENT INFRINGEMENT

28.   Plaintiff repeats and re-alleges the allegations in Paragraphs 1–27 as though fully set forth in their entirety.

ANSWER: CDW repeats and re-states its Answers to Paragraphs 1-27 as though fully set forth in their entirety.

29.   United States Patent No. 5,838,906 ("the '906 Patent") entitled "Distributed hypermedia method for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document," and United States Patent No. 7,599,985 ("the '985 Patent") entitled "Distributed hypermedia method and system for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document" were duly and legally issued by the United States Patent and Trademark Office on November 17, 1998 ('906 Patent) and October 6, 2009 ('985 Patent) after full and fair examination. The United States Patent and Trademark Office, after initially issuing the '906 Patent, has affirmed its validity on

two separate occasions, most recently in February 2009. The '906 Patent and the '985 Patent may be collectively referred to hereafter as "the patents".

ANSWER: CDW admits that United States Patent No. 5,838,906 is entitled "Distributed hypermedia method for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document," and that United States Patent No. 7,599,985 is entitled "Distributed hypermedia method and system for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document" and that they were originally issued by the United States Patent and Trademark Office on November 17, 1998 and October 6, 2009, respectively. CDW denies all remaining allegations of this paragraph, and specifically that the patents-in-suit are valid and enforceable.

30. Eolas has an exclusive license to the patents that includes, without limitation, the following: (a) all exclusionary rights under the patents, including, but not limited to, (i) the exclusive right to exclude others from making, using, offering for sale, or selling products embodying the patented inventions throughout the United States or importing such products into the United States, and (ii) the exclusive right to exclude others from using and otherwise practicing methods embodying the patented inventions throughout the United States; and (b) the exclusive right to sue and seek damages for infringement of any of the exclusionary rights identified above.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

31. On information and belief, Adobe has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.adobe.com and tv.adobe.com and maintained on servers located in and/or accessible from the United States under the control of Adobe; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers, including, without limitation, Flash and Shockwave; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Adobe indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Adobe has induced and continues to induce users of the web pages, software, and computer equipment identified above to

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directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Adobe indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Adobe contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

32. On information and belief, Amazon has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.amazon.com and maintained on servers located in and/or accessible from the United States under the control of Amazon; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Amazon indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Amazon has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Amazon indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Amazon contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

33. On information and belief, Apple has directly or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.apple.com and maintained on servers located in and/or accessible from the United States under the control of Apple; (ii) software, including, without limitation, browser software and software that allows content to be interactively presented in and/or served to browsers, including, without limitation, QuickTime, Safari for Windows, and Safari for the Mac; (iii) computer equipment, including, without

limitation, computer equipment that stores, serves, and/or runs any of the foregoing; and/or (iv) Apple desktop and laptop computers.

Apple indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Apple has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Apple indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Apple contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

34. On information and belief, Blockbuster has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.blockbuster.com and maintained on servers located in and/or accessible from the United States under the control of Blockbuster; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Blockbuster indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Blockbuster has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. -- Blockbuster indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Blockbuster contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

35. On information and belief, CDW has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively

presented in browsers, including, without limitation, the web pages and content accessible via www.cdw.com and maintained on servers located in and/or accessible from the United States under the control of CDW; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

CDW indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). CDW has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. CDW indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, CDW contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW denies the allegations of this paragraph.

36. On information and belief, Citigroup has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.citigroup.com and maintained on servers located in and/or accessible from the United States under the control of Citigroup; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Citigroup indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Citigroup has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. -- Citigroup indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Citigroup contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

37. On information and belief, eBay has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or

into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.ebay.com and maintained on servers located in and/or accessible from the United States under the control of eBay; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

eBay indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). eBay has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. eBay indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, eBay contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

38. On information and belief, Frito-Lay has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.frito-lay.com and maintained on servers located in and/or accessible from the United States under the control of Frito-Lay; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Frito-Lay indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Frito-Lay has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. – Frito-Lay indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Frito-Lay contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

39. On information and belief, Go Daddy has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via and maintained on servers located in and/or accessible from the United States under the control of Go Daddy; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Go Daddy indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Go Daddy has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. – Go Daddy indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Go Daddy contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

40. On information and belief, Google has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.google.com and maintained on servers located in and/or accessible from the United States under the control of Google; (ii) software, including, without limitation, browser software and software that allows content to be interactively presented in and/or served to browsers, including, without limitation, Chrome for Windows and Chrome for the Mac; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Google indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Google has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Google indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Google contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

41.   On information and belief, J.C. Penney has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.jcpennybrands.com and maintained on servers located in and/or accessible from the United States under the control of J.C. Penney; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

J.C. Penney indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). J.C. Penney has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. – J.C. Penney indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, J.C. Penney contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

42.   On information and belief, JPMorgan Chase has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.jpmorgan.com and maintained on servers located in and/or accessible from the United States under the control of JPMorgan Chase; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

JPMorgan indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). JPMorgan has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. --

JPMorgan indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, JPMorgan contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

43. On information and belief, New Frontier Media has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.mainlinereleasing.com and maintained on servers located in and/or accessible from the United States under the control of New Frontier Media; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

New Frontier Media indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). New Frontier Media has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. New Frontier Media indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, New Frontier Media contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

44. On information and belief, Office Depot has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.officedepot.com and maintained on servers located in and/or accessible from the United States under the control of Office Depot; (ii) software, including, without limitation, software that allows content to be interactively presented in

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and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Office Depot indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Office Depot has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Office Depot indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Office Depot contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

45. On information and belief, Perot Systems has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.perotsystems.com and maintained on servers located in and/or accessible from the United States under the control of Perot Systems; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Perot Systems indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Perot Systems has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Perot Systems indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Perot Systems contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

46. On information and belief, Playboy has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or

into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.playboy.com and maintained on servers located in and/or accessible from the United States under the control of Playboy; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Playboy indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Playboy has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Playboy indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Playboy contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

47. On information and belief, Rent-A-Center has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.rentacenter.com and maintained on servers located in and/or accessible from the United States under the control of Rent-a-Center; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Rent-A-Center indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Rent-A-Center has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Rent-A-Center indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Rent-A-Center contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

48.   On information and belief, Staples has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.staples.com and maintained on servers located in and/or accessible from the United States under the control of Staples; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Staples indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Staples has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Staples indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Staples contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

49.   On information and belief, Sun Microsystems has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.sun.com and maintained on servers located in and/or accessible from the United States under the control of Sun Microsystems; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers, including, without limitation, Java and JavaFX; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Sun Microsystems indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Sun Microsystems has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Sun Microsystems indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified

above, Sun Microsystems contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

50. On information and belief, Texas Instruments has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.ti.com and maintained on servers located in and/or accessible from the United States under the control of Texas Instruments; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Texas Instruments indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Texas Instruments has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Texas Instruments indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Texas Instruments contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

51. On information and belief, Yahoo has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.yahoo.com and maintained on servers located in and/or accessible from the United States under the control of Yahoo; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

Yahoo indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Yahoo has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Yahoo indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Yahoo contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

52. On information and belief, YouTube has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via www.youtube.com and maintained on servers located in and/or accessible from the United States under the control of YouTube; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

YouTube indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). YouTube has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. -- YouTube indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, YouTube contributes to the direct infringement of users of said web pages, software, and computer equipment.

ANSWER: CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

53. On information and belief, the Defendants have knowledge of the '906 Patent and have not ceased their infringing activities. The Defendants' infringement of the '906 Patent has been and continues to be willful and deliberate.

ANSWER: To the extent this allegation applies to CDW, CDW denies the allegations of this paragraph. To the extent this allegation applies to other Defendants,

CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

54.   As a direct and proximate consequence of the acts and practices of the Defendants in infringing and/or inducing the infringement of one or more claims of the '906 Patent and one or more claims of the '985 Patent, Eolas has been, is being, and, unless such acts and practices are enjoined by the Court, will continue to suffer injury to its business and property rights.

ANSWER: To the extent this allegation applies to CDW, CDW denies the allegations of this paragraph. To the extent this allegation applies to other Defendants, CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

55.   As a direct and proximate consequence of the acts and practices of the Defendants in infringing, directly and/or indirectly, one or more claims of the '906 Patent and one or more claims of the '985 Patent, Eolas has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

ANSWER: To the extent this allegation applies to CDW, CDW denies the allegations of this paragraph. To the extent this allegation applies to other Defendants, CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

56.   In addition, the infringing acts and practices of the Defendants has caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Eolas for which there is no adequate remedy at law, and for which Eolas is entitled to injunctive relief under 35 U.S.C. § 283.

ANSWER: To the extent this allegation applies to CDW, CDW denies the allegations of this paragraph. To the extent this allegation applies to other Defendants, CDW is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

IV.   PRAYER FOR RELIEF

ANSWER: CDW denies the allegations of Plaintiff's Prayer for Relief and Demand for Jury Trial, and denies that Plaintiff is entitled to any of the requested relief.

FURTHER ANSWERING, CDW states that it is not infringing, and has not infringed, directly or indirectly, any valid, enforceable claim of the '906 or '985 patents.

OTHER DEFENSES

CDW reserves the right to amend its Answer to add additional affirmative defenses, including instances of inequitable conduct, consistent with the facts discovered in this case.

1. CDW has not infringed, and is not infringing, directly or indirectly, any valid and enforceable claim of the '906 or '985 patents.

2. On information and belief, and after a reasonable opportunity for further investigation and discovery, the claims of the '906 and '985 patents are invalid for failing to satisfy one or more of the conditions of patentability of Title 35 of the United States Code, including, but not limited to, sections 101, 102, 103 and 112.

3. On information and belief, some or all of the relief sought by Plaintiff is barred by its failure, and the failure of its respective licensees, to meet the requirements of 35 U.S.C. § 287.

4. On information and belief, some or all of the relief sought by Plaintiff is barred by the doctrine of prosecution history, judicial estoppel, laches, and/or waiver.

5. Some or all of the relief sought by Plaintiff is barred by the limitations of 35 U.S.C. § 286.

6. The relief sought by Plaintiff is barred in whole or in part by the terms of 35 U.S.C. Sections 284, 305, and/or 307.

7. Plaintiff is not entitled to equitable relief at least because it has not and will not suffer irreparable harm, it does not practice the patent, because it is not without an adequate remedy at law and/or the relief is barred by the doctrine of unclean hands.

8.   Plaintiff's claims are precluded to the extent that an express or implied

license bars recovery against CDW, including but not limited to the license held by

Microsoft Corp., where, for example, any accused systems are supplied, directly or

indirectly, to CDW or to another entity, having an express or implied license.

9.   Plaintiff's claims for damages are barred in whole or in part due to its

failure to mitigate any alleged damages.

10.   To the extent Eolas asserts CDW indirectly infringes the claims of the

'906 and '985 patents, CDW is not liable for acts alleged to have been performed before

CDW allegedly knew that its actions would cause indirect infringement

11.   Eolas is estopped by the prosecution history of the '906 and '985 patents

from asserting any claim of infringement against CDW.

12.   The relief sought by Plaintiff is barred by the doctrine of patent

exhaustion.

13.   The relief sought by Plaintiff is barred to the extent CDW is a third party

beneficiary of Plaintiff's license agreement with Microsoft Corp., including but not

limited to the covenant not to sue contained therein which is set forth below:

> Notwithstanding any limitations expressed otherwise in this Agreement, Licensor
> [*i.e.* Eolas] covenants not to sue any of Licensee's [*i.e.* Microsoft's] or its
> Affiliates' customers, developers, manufacturers, distributors, resellers,
> wholesalers, retailers or end-users of Licensee Products under the Licensed
> Patents for their making, using, selling, offering for sale, licensing, leasing,
> importing, or otherwise disposing of or distributing Licensee Products or
> practicing any method in connection with their making, using, selling, offering for
> sale, licensing, leasing, importing or otherwise disposing or distributing Licensee
> Products.

14.   The relief sought by Eolas is barred as a consequence of its receipt of full

compensation from others, including but not limited to Microsoft.

COUNTERCLAIM

1.   For its counterclaim against Counter-Defendant Eolas Technologies

Incorporated ("Eolas"), Counter-Plaintiff CDW LLC ("CDW") states as follows:

2.   This is an action for a declaratory judgment arising under the United

States patent laws, 35 U.S.C. §§ 1-376, and the declaratory judgment statute, 28 U.S.C.

§ 2201.

3.   CDW is an Illinois corporation with a principal place of business at 200 N.

Milwaukee Avenue, Vernon Hills, IL 60061.

4.   Counter-Defendant Eolas alleges in this action to be a Texas Limited

Liability Company with its principal place of business at 313 East Charnwood Street,

Tyler, Texas 75701.

5.   This Court has subject matter jurisdiction over this action pursuant to 28

U.S.C. §§ 1331, 1338 and 2201.

6.   This Court has personal jurisdiction over Eolas, and venue is proper in this

district under 28 U.S.C. § 1391, if for no other reason than Eolas has consented and

submitted thereto by filing the underlying action.

COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
REGARDING U.S. PATENT NO. 5,838,906

7.   CDW repeats and realleges Paragraphs 1-6 of this counterclaim, inclusive,

as though fully set forth herein and incorporates them by reference.

8.   Eolas alleges in this action that CDW infringes one or more claims of the

'906 patent.

9.   CDW denies infringement of any claim of the '906 patent.

10.   There is, therefore, an actual case and controversy between the parties with respect to infringement of the '906 patent.

11.   CDW does not infringe, directly or indirectly, claims 1, 4, 5, 6, 9, and 10 of the '906 Patent (and their dependent claims) where the "browser application" limitation is allegedly satisfied by Microsoft's Internet Explorer.

12.   Eolas may not to bring suit against CDW for infringement of claims 1, 4, 5, 6, 9, and 10 of the '906 Patent (and their dependent claims) where the "browser application" limitation of those claims is allegedly satisfied by Microsoft's Internet Explorer.

13.   Eolas may not to bring suit against CDW for infringement of claims 1, 4, 5, 6, 9, or 10 of the '906 Patent (and their dependent claims) where Microsoft's Internet Explorer is used in connection with the acts alleged to infringe.

14.   CDW does not infringe, directly or indirectly, claims 4, 5, 9, and 10 of the '906 Patent (and their dependent claims) where the "executing on the network server" or "said network server to execute" limitations are allegedly satisfied by Microsoft software.

15.   Eolas may not to bring suit against CDW for infringement of claims 4, 5, 9, and 10 of the '906 Patent (and their dependent claims) where the "executing on the network server" or "said network server to execute" limitations are allegedly satisfied by Microsoft software.

16.   Eolas may not to bring suit against CDW for infringement of claims 4, 5, 9, or 10 of the '906 Patent (and their dependent claims) where Microsoft software, including but not limited to Microsoft server software and Microsoft development tools, is used in connection with the acts alleged to infringe.

17.   Eolas may not bring suit against CDW alleging that certain websites infringe where Microsoft software is used to develop, serve, deliver, access, receive, interact with, and/or display those websites, its web pages, or their content.

18.   Eolas has brought and maintained its suit against CDW in violation of its obligations, including but not limited to those described in Paragraphs 12, 13, 15, 16, and 17.

COUNT II
DECLARATORY JUDGMENT OF PATENT INVALIDITY
REGARDING U.S. PATENT NO. 5,838,906

19.   CDW repeats and realleges Paragraphs 1-18 of this counterclaim, inclusive, as though fully set forth herein and incorporates them by reference.

20.   Eolas alleges in this action that CDW infringes one or more claims of the '906 patent.

21.   CDW denies infringement and further contends that each of the asserted claims of the '906 patent is invalid pursuant to Title 35 of the United States Code.

22.   There is, therefore, an actual case and controversy between the parties with respect to the validity of the claims of the '906 patent.

23.   Each of the claims of the '906 patent is invalid for failure to satisfy one or more provisions of Title 35 of the United States Code, including, but not limited to, sections 101, 102, 103 and 112.

COUNT III
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
REGARDING U.S. PATENT NO. 7,599,985

24.   CDW repeats and realleges Paragraphs 1-23 of this counterclaim, inclusive, as though fully set forth herein and incorporates them by reference.

25.   Eolas alleges in this action that CDW infringes one or more claims of the '985 patent.

26.   CDW denies infringement of any claim of the '985 patent.

27.   There is, therefore, an actual case and controversy between the parties with respect to infringement of the '985 patent.

28.   For example, Eolas contends, among other things, that CDW infringes Claim 36 of the '985 Patent by providing a feature on its webpage, www.cdw.com, that Eolas refers to as the "Autosuggest" feature.

29.   Claim 36 claims a method.

30.   The following is one of the recited steps that must be performed by CDW in order for CDW to directly infringe Claim 36: "receiving, at the client workstation from the network server over the distributed hypermedia network environment, at least one file containing information to enable a browser application to display at least a portion of a distributed hypermedia document within a browser-controlled window."

31.   CDW does not perform the receiving step in ¶ 30, *supra*, where the client workstation is operated by a person who is not a CDW employee.

32.   The following is another of the recited steps that CDW must perform in order to directly infringe Claim 36: "executing the browser application on the client workstation."

33.   CDW does not perform the "executing" step in ¶ 32, *supra*, where the client workstation is operated by a person who is not a CDW employee.

34.   The following is another of the recited steps that CDW must perform in order to directly infringe Claim 36: "identifying an embed text format which corresponds

to a first location in the document, where the embed text format specifies the location of at least a portion of an object."

36. Eolas currently contends that a web browser on the client computer performs the step described in ¶ 34, *supra*.

36. With respect to the step of Claim 36 referred to in ¶ 34 above, Eolas currently contends that CDW's "AutoSuggest" feature infringes Claim 36 as a result of one or more of the following alleged "embed text formats":

Example One:

```
<script language='javascript' type='text/javascript'
src='/global/gui/javascript/AutoSuggest__2_11_0_25352.js'>
</script>
```

Example Two:

```
<script>

new actb('searchbox2', custom_array,'/AutoComplete.aspx?');
</script>
```

Example Three:

```
var suggesturl = "";
function actb(id, ca, url) {
  this.actb_suggesturl = url || (ca ? "" : suggesturl);
  this.actb_timeOut = -1;
  this.actb_response = 200;
  this.actb_lim = 10;

****

http.open("GET", this.actb_suggesturl + "key=" + ot, true);
****

    toreturn += obj.offsetLeft;
    obj = obj.offsetParent
  }
  return toreturn
};
```

37.   Eolas currently does not contend that CDW's "AutoSuggest" feature infringes Claim 36 of the '985 Patent as a result of any alleged embed text format, other than those identified in ¶ 36, above.

38.   To infringe Claim 36, an accused embed text format must correspond to a first location in the hypermedia document.

39.   Eolas currently contends that Examples One and Three correspond to the same first location in the hypermedia document.

40.   Eolas currently contends that the first location to which Example One corresponds is the place in the HTML source code for the web page at www.cdw.com where the text of Example One appears.

41.   Eolas currently contends that the first location to which Example Two corresponds is the place in the HTML source code for the web page www.cdw.com where the text of Example Two appears.

42.   To infringe Claim 36, an accused embed text format must specify the location of at least a portion of an object.

43.   Eolas currently contends that each of the alleged embed text formats set forth in ¶ 36, *supra* specifies the location of at least a portion of the *same* object.

44.   Eolas currently contends that the location specified by each of the alleged embed text formats in ¶ 36, *supra*, includes the following: "AutoComplete.aspx."

45.   Eolas currently contends that the location referred to in ¶ 42 above is specified for the accused "AutoComplete" feature only after an end-user has manually typed one or more letters into the search box appearing on the home page at www.cdw.com.

46.   Eolas currently contends that the object referred to in ¶ 42, above for the accused "AutoSuggest" feature is a database on a CDW server.

47.   The following is another of the recited steps that CDW must perform in order to directly infringe Claim 36: "automatically invoking the executable application, in response to the identifying of the embed text format, in order to enable an end-user to directly interact with the object, while the object is being displayed within a display area created at the first location."

48.   Eolas currently contends that the "executable application" referred to in ¶ 47 comprises JavaScript code within

www.cdw.com/global/gui/javascript/AutoSuggest__2_11_0_25352.js.

49.   Eolas currently contends with respect to the accused "AutoSuggest" feature that the "display area" referred to in ¶ 47, *supra* is the area shown outlined in red in the screen shot shown below:

50.   Eolas asserts, among other things, that CDW's servers communicate with at least one client workstation.

51.   Eolas currently contends that CDW infringes Claims 20, 32, 40 and 44 of the '985 Patent (and their dependent claims) by, among other things, the communication described in ¶ 50, above.

52.   Eolas currently contends that the communication described in ¶ 51, above, satisfies the "communicating via the network server" limitation recited in Claims 20, 32, 40 and 44 of the '985 Patent (and their dependent claims).

53.   Other than to the extent explicitly described in detail in the Infringement Contentions attached as Exhibits A-C of its Reply to CDW's Amended Answer and Counterclaim to Eolas' First Amended Complaint, Eolas makes no other infringement allegations with regard to CDW.

54.   CDW does not infringe, directly or indirectly, claims 20, 32, 40, and 44 of the '985 Patent (and their dependent claims) where the "communicating via a/the network server" limitation is allegedly satisfied by Microsoft software.

55.   Eolas may not bring suit against CDW for infringement of claims 20, 32, 40, and 44 of the '985 Patent (and their dependent claims) where the "communicating via a/the network server" limitation is allegedly satisfied by Microsoft software.

56.   Eolas may not to bring suit against CDW for infringement of claims 20, 32, 40, or 44 of the '985 Patent (and their dependent claims) where Microsoft software, including but not limited to Microsoft server software and Microsoft development tools, is used in connection with the acts alleged to infringe.

57.   CDW does not infringe, directly or indirectly, claim 24 of the '985 Patent (and its dependent claims) where Microsoft software allegedly, in whole or in part, either: (i) runs an executable application; (ii) enables an end-user to directly interact with an

object; (iii) utilizes said executable application to interactively process said object; (iv) displays said object within a display area; (v) creates said display area within a portion of a hypermedia document at a first location; (vi) displays said documents in a browser-controlled window; (vii) receives 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; (viii) operates a network server which communicates, or otherwise communicates, said file; (ix) executes said browser application; (x) responds to text formats to initiate processing specified by the text formats; (xi) identifies an embed text format corresponding to said first location; (xii) utilizes type information associated with said object to identify and to locate said executable application, or, (xiii) automatically invokes the executable application.

58.   Eolas may not bring suit against CDW for infringement of claim 24 of the '985 Patent (and its dependent claims) where Microsoft software allegedly, in whole or in part, either: (i) runs an executable application; (ii) enables an end-user to directly interact with an object; (iii) utilizes said executable application to interactively process said object; (iv) displays said object within a display area; (v) creates said display area within a portion of a hypermedia document at a first location; (vi) displays said document in a browser-controlled window; (vii) receives 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; (viii) operates a network server which communicates, or otherwise communicates, said file; (ix) executes said browser application; (x) responds to text formats to initiate processing

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specified by the text formats; (xi) identifies an embed text format corresponding to said first location; (xii) utilizes type information associated with said object to identify and to locate said executable application, or, (xiii) automatically invokes the executable application.

59.   Eolas may not bring suit against CDW for infringement of claim 24 of the '985 Patent (and its dependent claims) where Microsoft software is allegedly used in connection with one or more of the following: (i) running of an executable application; (ii) enabling of an end-user to directly interact with an object; (iii) utilizing of said executable application to interactively process said object; (iv) displaying of said object within a display area; (v) creating of said display area within a portion of a hypermedia document at a first location; (vi) displaying of said document in a browser-controlled window; (vii) receiving of 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; (viii) operating of a network server which communicates, or otherwise communicates, said file; (ix) executing of said browser application; (x) responding to text formats to initiate processing specified by the text formats; (xi) identifying of an embed text format corresponding to said first location; (xii) utilizing of type information associated with said object to identify and to locate said executable application, or, (xiii) automatically invoking of said executable application.

60.   Eolas may not to bring suit against CDW for infringement of claim 28 of the '985 Patent (and its dependent claims) where Microsoft software allegedly, in whole or in part, either: (i) operates the executable application; (ii) enables an end-user to

directly interact with an object; (iii) displays said object within a display area; (v) creates said display area within a portion of a hypermedia document at a first location; (vi) displays said document in a browser-controlled window; (vii) receives 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; (viii) operates a network server which communicates, or otherwise communicates, said file; (ix) executes said browser application; (x) responds to text formats to initiate processing specified by the text formats; (xi) identifies an embed text format corresponding to said first location; (xii) utilizes type information associated with said object to identify and to locate said executable application, or (xiii) automatically invokes said executable application.

61.   Eolas may not bring suit against CDW for infringement of claim 28 of the '985 Patent (and its dependent claims) where Microsoft software was used in connection with the acts alleged to infringe.

62.   Eolas may not bring suit against CDW alleging that certain websites infringe where Microsoft software is used to develop, serve, deliver, access, receive, interact with, and/or display those websites, its web pages, or their content.

63.   Eolas has brought and maintained its suit against CDW in violation of its obligations, including but not limited to those described in Paragraphs 55, 56, 58, and 59-62.

COUNT IV
DECLARATORY JUDGMENT OF PATENT INVALIDITY
REGARDING U.S. PATENT NO. 7,599,985

64.   CDW repeats and realleges Paragraphs 1-63 of this counterclaim, inclusive, as though fully set forth herein and incorporates them by reference.

65.   Eolas alleges in this action that CDW infringes one or more claims of the '985 patent.

66.   CDW denies infringement and further contends that each of the asserted claims of the '985 patent is invalid pursuant to Title 35 of the United States Code.

67.   There is, therefore, an actual case and controversy between the parties with respect to the validity of the claims of the '985 patent.

68.   Each of the claims of the '985 patent is invalid for failure to satisfy one or more provisions of Title 35 of the United States Code, including, but not limited to, sections 101, 102, 103 and 112.

COUNT V
DECLARATORY JUDGMENT OF UNENFORCEABILITY REGARDING U.S. PATENT NO. 5,838,906

69.   CDW incorporates by reference the allegations contained in paragraphs 1-68 of its Counterclaims.

70.   Every claim of the '906 patent is unenforceable due to inequitable conduct before the United States Patent and Trademark Office.

71.   Michael D. Doyle ("Doyle") is one of the named inventors of the patents-in-suit, the '906 and '985 patents.

72.   As a named inventor, Doyle was bound by a duty of candor and good faith in dealing with the Patent Office during prosecution of the patents-in-suit.

73.   Doyle's duty extended to his dealings with the Patent Office during the reexaminations of the '906 patent.

74.   Doyle's duty of candor and good faith included a duty to disclose to the Patent Office all information known to him to be material to patentability as defined in 37 C.F.R. § 1.56.

75.   Doyle had a financial incentive to deceive the Patent Office during prosecution of the patents-in-suit, including during the reexaminations of the '906 patent.

76.   Doyle worked at the University of California, San Francisco when he allegedly conceived of the inventions claims in the '906 and '985 patents.

77.   The '906 and '985 patents are owned by The Regents of the University of California.

78.   Doyle and his co-inventors are entitled to receive a portion of any royalties paid to The Regents of the University of California related to the patents-in-suit.

79.   Doyle is a founder of the plaintiff in this action, Eolas Technologies Incorporated ("Eolas").

80.   Doyle quit his job to found Eolas, and personally invested time and money in Eolas.

81.   Doyle has had a financial interest in Eolas since at least August 21, 1995.

82.   On or about August 21, 1995, Eolas acquired rights to the patent application that matured into the '906 patent.

83.   Doyle was personally involved in the prosecution of the '906 patent, the reexaminations of the '906 patent, and the prosecution of the '985 patent at the same time as he had a financial interest in Eolas and a financial interest in any royalties on the patents-in-suit paid to The Regents of the University of California.

84.   As explained in more detail below, Doyle breached his duty of candor and good faith in dealing with the Patent Office. Doyle failed to disclose material information and made affirmative misrepresentation of material facts. Doyle did so with knowledge of the information he withheld, with knowledge of the falsity of his misrepresentations, and with the specific intent to deceive the Patent Office. The circumstances of Doyle's actions confirm an intent to deceive the Patent Office.

85.   Doyle breached his duty of candor and good faith in dealing with the Patent Office by failing to disclose material information related to the ViolaWWW browser. Doyle did so with knowledge of the information he withheld and with the specific intent to deceive the Patent Office. The circumstances of Doyle's actions confirm an intent to deceive the Patent Office.

86.   The ViolaWWW browser was material to the patentability of all claims of the '906 patent because is disclosed limitations that the Patent Office believed were missing in the prior art, including interactivity *embedded within* the webpage (as opposed to a separate window), *automatic* invocation of the interactivity (as opposed to requiring a mouse click to enable the interactivity), and use of a separate executable application (as opposed to a script). Doyle knew that the ViolaWWW browser disclosed these limitations, yet he withheld this information from the Patent Office at the same time that he argued to the Patent Office that these limitations were missing from the prior art.

87.   The application for the '906 patent was filed on October 17, 1994.

88.   Its critical date under 35 U.S.C. § 102(b) was therefore October 17, 1993 because any printed publication describing the claimed invention, or any public use of the

claimed invention in the United States before October 17, 1993 would be an absolute bar to patentability.

89.   Doyle knew before the application for the '906 patent was filed that an individual in Northern California named Pei Wei had developed a browser called "ViolaWWW" before the critical date of October 17, 1993.

90.   On May 20, 1994, David Raggett sent an e-mail to Doyle regarding object level embedding in web browsers. In this email, Raggett advised Doyle that he "might want to look at Viola which [Raggett] seem[s] to remember takes advantage of the tk took kit to provide a certain level of embedding."

91.   Raggett further advised Doyle that he could "find a pointer to Viola off the CERN WWW project page."

92.   Later on the same day, May 20, 1994, David Martin, who was one of Doyle's colleagues at the University of California at San Francisco and who was also named as an inventor on the '906 patent, responded to a posting from Pei Wei on a publicly-accessible e-mail distribution list. Pei Wei's post had included the following statements: "In order to do better testings and support of ViolaWWW, I would like to solicit donations for guest accounts on the major Unix platforms . . . So, if your organization has some CPU crunchies to spare, good network connectivity, don't have a firewall, want to help viola development, etc, please drop me a note. Based mostly on network connectivity, I'll select one (maybe two) offer(s) for each different platform." David Martin's response to Pei Wei included the following statements: "I am willing to discuss providing accounts on SGI IRIX 5.x, Solaris 2.x, Alpha OSF/1. Please let me know what you require in terms of disk space, compiler, utilities, etc . . ."

93.   Thus by May 20, 1994, several months before the application for the '906 patent was filed, Doyle knew about Pei Wei's ViolaWWW browser.

94.   Doyle learned even more about the ViolaWWW browser before the application for the '906 patent was filed.

95.   On August 30, 1994, at approximately 11:15 p.m. California time, Doyle posted a "Press Release" to the publicly-accessible VRML e-mail distribution list that included the following statements:

> Researchers at the U. of California have created software for embedding interactive program objects within hypermedia documents. Previously, object linking and embedding (OLE) has been employed on single machines or local area networks using MS Windows –TM-. This UC software is the first instance where program objects have been embedded in documents over an open and distributed hypermedia environment such as the World Wide Web on the Internet.

96.   On August 31, 1994, at approximately 6:52 p.m. California time, Pei Wei posted a response on the publicly-accessible VRML e-mail distribution list that included the following statements: "I don't think this is the first case of program objects embedded in docs and transported over the WWW. ViolaWWW has had this capabilities for months and months now."

97.   Pei Wei's response included a link to an FTP site where anyone "interested in learning more about how ViolaWWW does this embedded objects things can get a paper on it."

98.   There paper cited by Pei Wei was titled "A Brief Overview of the VIOLA Engine, and its Applications."

99.   The paper cited by Pei Wei was dated August 16, 1994, over two months before the application for the '906 patent was filed.

100.   The paper cited by Pei Wei included the following statements and

graphics:

Embedding mini applications

Viola's language and toolkit allows ViolaWWW to render
documents with embedded viola objects. Although the
viola language is not part of the World Wide Web standard
(yet?), having this capability provides a powerful extension
mechanism to the basic HTML.

For example, if the HTML's input-forms do not do exactly
what you want, you have the option to build a mini
customized input-form application. And it could have
special scripts to check for the validity of the entered data
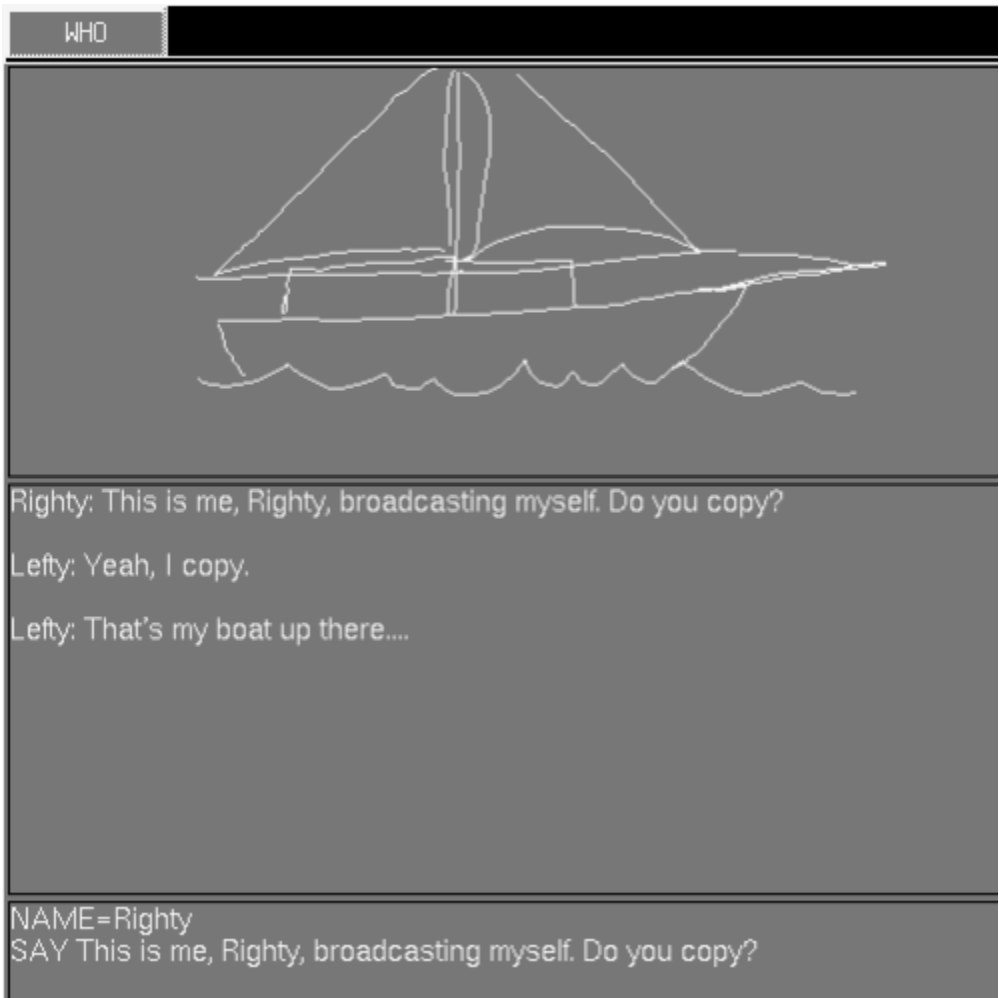before even making a connection to the server.

Or, if your document needs to show data that is
continuously updated, you could build a small application
such as this which display the CPU load of a machine.
Note that only the graph field is continuously updated, but
not the rest of the document.

Other possible applications include front-ends to the stock
market quotes, new wire updates, tele-video style service,
etc.

Here's another example of a mini interactive application
that is embedded into a HTML document. It's a chess
board in which the chess pieces are actually active and
moveable. And, illegal moves can be checked and denied
straight off by the intelligence of the script in the
application. Given more work, this chess board application
can front-end a chess server, connected to it using the
socket facility in viola.

What follows is a screendump of a demo of an embedded viola application that lets readers of this HTML page communicate by typing or drawing. Like the chess board application above, this chat application can stand-alone (and have nothing to do with the World Wide Web), or be embedded into a HTML document.

By the way, to make this possible, a multi-threaded/persistent server was written to act as a message relay (and to handle HTTP as well).

Righty: This is me, Righty, broadcasting myself. Do you copy?

Lefty: Yeah, I copy.

Lefty: That's my boat up there....

NAME=Righty
SAY This is me, Righty, broadcasting myself. Do you copy?

This next mini application front-ends a graphing process (on the same machine as the viola process). An important thing to note is that, like all the other document-embeddable mini application shown, no special modification to the viola engine is required for ViolaWWW to support them. All the bindings are done via the viola language, provided that the necessary primitives are available in the interpreter, of course

Put it another way, because of the scripting capability, the ViolaWWW browser has become very flexible, and can take on many new features dynamically. C-code patches and recompilation of the browser can frequently be avoided.

This attribute can be very important for several reasons. It keeps the size of the core software small, yet can grow dynamically as less frequently used features are

occasionally used, or as new accessories/components are added.

Such new accessories can be as simple as little applets that accompany documents, or conceivably as complicated as a news or mail reader. An analogy is how Emac's programming environment allows that text editor to become much more than just a text editor.

Not only can mini applications be embedded inside of documents, they can even be plugged into the ViolaWWW's "toolbar."

The following picture shows a "bookmark tool" that acts as a mini table of contents for the page. In this case, the bookmark is linked to the document (by using the <LINK> tag of HTML 3.0), and the bookmark will appear and disappear with the document.

> One can imagine many plug-in accessories/applets/tools
> possible with this facility. Like, a self guiding slideshow
> tool. Or, document set specific navigational tools/icons
> that are not pasted onto the page so that the navigational
> icons don't scroll away from view.

101.   "Doyle downloaded and read the paper." 399 F.3d 1325, 1330 (Fed. Cir. 2005).

102.   On August 31, 1994, at approximately 9:06 p.m. California time, Doyle responded to Pei Wei's statement at approximately 6:52 p.m. that "I don't think this is the first case of program objects embedded in docs and transported over the WWW. ViolaWWW has had this capabilities for months and months now." Doyle responded by asking Pei Wei, "How many months and months? We demonstrated our technology in 1993."

103.   On August 31, 1994, at approximately 11:16 p.m. California time, Pei Wei responded to the message that Doyle had sent at approximately 9:06 p.m. Pei Wei's response included the following statements:

> Definitely by May 8, 1993 we had demonstrated that
> plotting demo (the very one shown in the viola paper) to
> visitors from a certain computer manufacturer… This demo
> was memorable because someone and I at ORA had lost
> sleep the night before the meeting, in order to cook up that
> particular plotting demo :) We had to show something
> cool.

> That demo wasn't very hard to do because by that time the
> basic capability was already in place for violaWWW to
> fetch viola objects over HTTP (or whatever) and plug them
> into documents. Of course, our wire-frame plotting demo
> isn't anywhere as comprehensive as yours. But, the point
> was that there was a way to embed programmable &
> interactive objects into HTML documents.

104.   When Pei Wei referred to the "plotting demo (the very one shown in the viola paper)," he was referring to the plot of the fighter jet shown above in the window titled "XPlot." *See supra* ¶ 100.

105.   When Pei Wei referred to a demonstration "by May 8, 1993" to "visitors from a certain computer manufacturer," he was referring to a demonstration of the plotting demo to Karl Jacob and James Kempf from Sun Microsystems on May 7, 1993. This demonstration took place in Northern California. There was no limitation, restriction or obligation of secrecy on Karl Jacob or James Kempf.

106.   The Federal Circuit has held that "Wei's May 7, 1993 demonstration to two Sun Microsystems employees without confidentiality agreements was a public use under [35 U.S.C. § 102(b)]." 399 F.3d 1325, 1335 (Fed. Cir. 2005).

107.   On August 31, 1994, at approximately 11:13 p.m. California time, Doyle responded again to the message that Pei Wei had sent at approximately 6:52 p.m.

108.   Doyle's response was sent after Doyle had read Pei Wei's paper about the ViolaWWW browser dated August 16, 1994 (described above, *supra* ¶¶ 97-100).

109.   Doyle's response included the following statements: "Pei is mistaken on two counts, as I describe below . . . . As Pei's paper on Viola states, that package did not support what it calls 'embeddable program objects' until 1994. . . . Furthermore, Viola merely implements an internal scripting language . . . ."

110. On August 31, 1994, at approximately 11:36 p.m. California time, Doyle responded to the message that Pei Wei had sent at approximately 11:16 p.m. Doyle's response included the following statements: "Out of curiosity, did you publicly demonstrate this or publish any results before 1994?"

111. On September 1, 1994, at approximately 12:08 a.m. California time, Pei Wei responded to the message that Doyle had sent at approximately 11:13 p.m.

112. Pei Wei's message at approximately 12:08 a.m. was also responsive to the message that Doyle had sent at approximately 11:36 p.m.

113. Pei Wei's message to Doyle at 12:08 a.m. included the following statements:

> Well. Viola's model was *demonstrated* in 1993, *released* freely in 1994. . . . And, as for the plotting demo, it actually is really just a front-end that fires up a back-end plotting program (and the point is that that back-end could very well be running on a remote super computer instead of the localhost). For that demo, there is a simple protocol such that the front-end app could pass an X window ID to the back-end, and the back-end draws the graphics directly onto the window violaWWW has opened for it.

114. Doyle deleted from his computer his emails with Pei Wei on August 31 and September 1, 1994, and the copy of the Viola paper dated August 16, 1994, that he had downloaded and read. Doyle kept on his computer other emails from that timeframe, however.

115. Doyle was living in Northern California on August 31, 1994, when he exchanged messages with Pei Wei about the ViolaWWW browser.

116. Pei Wei was living in Northern California on August 31, 1994, when he exchanged messages with Doyle about the ViolaWWW browser.

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117. There was no limitation, restriction or obligation of secrecy on the recipients of Pei Wei's messages on August 31 and September 1, 1994, about the ViolaWWW browser.

118. There was no limitation, restriction or obligation of secrecy on the readers of Pei Wei's paper about the ViolaWWW browser dated August 16, 1994.

119. On October 17, 1994, the application for the '906 patent was filed. Doyle and Martin were among those named as inventors.

120. The application for the '906 patent discloses the Mosaic browser and the Cello browser, but not the ViolaWWW browser.

121. The application for the '906 patent included an information disclosure statement that identified several pieces of prior art, but not the ViolaWWW browser.

122. On November 22, 1994, Doyle signed a declaration under penalty of perjury that included the following statements: "I believe I am . . . an original, first and joint inventor . . . of the subject matter which is claimed and for which a patent is sought . . . the specification of which . . . was filed on October 17, 1994 as Application Serial No. 08/324,443. . . . I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56."

123. No disclosure about the ViolaWWW browser was ever provided to the Patent Office during prosecution of application number 08/324,443, which matured into the '906 patent.

124.   Doyle was reminded about Pei Wei and the ViolaWWW browser in 1995, during prosecution of the '906 patent, but still no disclosure about the ViolaWWW browser was provided to the Patent Office.

125.   On August 21, 1995, at approximately 11:42 a.m. California time, Doyle posted a "Press Release" to the publicly-accessible WWW-talk e-mail distribution list. Doyle's post included the following statements: "Eolas Technologies Inc. announced today that it has completed a licensing agreement with the University of California for the exclusive rights to a pending patent covering the use of embedded program objects, or 'applets,' within World Wide Web documents."

126.   On August 21, 1995, at approximately 12:54 p.m. California time, Pei Wei responded on the publicly-accessible WWW-talk e-mail distribution list to Doyle's "Press Release." Pei Wei's response included the following statements: "[F]or the record, I just want to point out that the 'technology which enabled Web documents to contain fully-interactive "inline" program objects' was existing in ViolaWWW and was *released* to the public, and in full source code form, even back in 1993... Actual conceptualization and existence occurred before '93."

127.   On August 21, 1995, at approximately 1:14 p.m. California time, Doyle responded to the message Pei Wei had sent at approximately 12:54 p.m. Doyle's response included the following statements: "We've had this discussion before (last September, remember?). You admitted then that you did NOT release or publish anything like this before the Eolas demonstrations."

128.   On August 21, 1995, at approximately 4:09 p.m. California time, Pei Wei

responded to the message that Doyle had sent at approximately 1:14 p.m. Pei Wei's

response included the following statements:

> Please carefully re-read my letter to you... I said Viola was
> demonstrated in smaller settings, but before your demo.
> The applets stuff was demo'ed to whomever wanted to see
> it and had visited our office at O'Reilly & Associates
> (where I worked at the time).
>
> This is what I wrote on the VRML list:
>
> . . . .
>
> > Definitely by May 8, 1993 we had demonstrated that plotting demo
> > (the very one shown in the viola paper) to visitors from a certain
> > computer manufacturer… This demo was memorable because someone
> and I
> > at ORA had lost sleep the night before the meeting, in order to cook up
> > that particular plotting demo :) We had to show something cool.
>
> That date (May 93), at least, predates your demo if I'm not
> mistaken. Then around August 93, it was shown to a bunch
> of attendees at the first Web Conference in Cambridge. . . .
>
> . . . .
>
> If you're talking about interactive apps *specifically* on
> the web, ie applets in-lined into HTML documents etc., and
> with bi-directional communications, then look at
> ViolaWWW as it existed around late '92 early '93.

129.   When Pei Wei referred to the "plotting demo (the very one shown in the

viola paper)," he was referring to the plot of the fighter jet shown above in the window

titled "XPlot." *See supra* ¶ 100.

130.   When Pei Wei referred to a demonstration "by May 8, 1993," he was

referring to the demonstration of the plotting demo to two Sun Microsystems employees

that the Federal Circuit has held "was a public use under [35 U.S.C. § 102(b)]." 399 F.3d

1325, 1335 (Fed. Cir. 2005).

131.   When Pei Wei referred to the "first Web Conference in Cambridge" "around August 1993," he was referring to the "World-Wide Web Wizards Workshop" held in Cambridge, Massachusetts on July 28–30, 1993.

132.   People attending the Wizards workshop included Tim Berners-Lee, Marc Andreesen, Eric Bina, Dale Dougherty, Scott Silvey, and Pei Wei.

133.   Tim Berners-Lee and Dale Dougherty were the organizers of the Wizards workshop.

134.   Dale Dougherty worked at O'Reilly & Associates in Northern California.

135.   In 1992, Dale Dougherty learned about Viola and recruited Pei Wei to join O'Reilly & Associates. Pei Wei's job at O'Reilly & Associates was to continue developing the ViolaWWW browser.

136.   Scott Silvey worked with Pei Wei at O'Reilly & Associates in Northern California.

137.   When Pei Wei wrote "This demo was memorable because someone and I at ORA had lost sleep the night before the meeting, in order to cook up that particular plotting demo," the other person he was referring to was Scott Silvey.

138.   Tim Berners-Lee is the person generally attributed to be the inventor of the World Wide Web.

139.   Marc Andreesen and Eric Bina were the authors of Mosaic, a popular browser for the World Wide Web created at the National Center for Supercomputing Applications (NCSA) at the University of Illinois at Urbana-Champaign.

140.   Marc Andreesen and Eric Bina went on to found Netscape, the manufacturer of another popular browser for the World Wide Web.

141.	Pei Wei and Scott Silvey demonstrated the ViolaWWW browser and its ability to automatically invoke interactive objects embedded within a webpage using the "VOBJF" tag to at least Marc Andreesen and Tim Berners-Lee at the Wizards workshop in Cambridge, Massachusetts in July 1993 — over one year before the application for the '906 patent was filed.

142.	There was no limitation, restriction or obligation of secrecy on anyone at the Wizards workshop.

143.	Pei Wei's demonstration at the Wizards workshop of the ViolaWWW browser and its ability to automatically invoke interactive objects embedded within a webpage using the "VOBJF" tag was a public use under 35 U.S.C. § 102(b).

144.	Despite Pei Wei's communications to Doyle repeatedly providing evidence that the ViolaWWW browser was material prior art under 35 U.S.C. § 102(b), Doyle never disclosed the ViolaWWW browser to the Patent Office during prosecution of application number 08/324,443, which matured into the '906 patent.

145.	Instead, Doyle deleted from his computer his emails with Pei Wei on August 21, 1995. Doyle kept on his computer other emails from that timeframe, however.

146.	 In 1998, during prosecution of the '906 patent, Doyle collected additional information about the ViolaWWW browser, but he still did not disclose any information about the ViolaWWW browser to the Patent Office, as explained in more detail below.

147.	During prosecution of the '906 patent, Doyle maintained a folder called "Viola stuff."

148.   The "Viola stuff" folder included a printout of Pei Wei's message to Doyle on August 31, 1994, at approximately 6:52 p.m. California time, in which Pei Wei told Doyle, "I don't think this is the first case of program objects embedded in docs and transported over the WWW. ViolaWWW has had this capabilities for months and months now." *See supra* ¶¶ 96-101.

149.   The "Viola stuff" folder included a printout of Doyle's message to Pei Wei on August 31, 1994, at approximately 11:36 p.m. California time, in which Doyle asked Pei Wei, "Out of curiosity, did you publicly demonstrate this or publish any results before 1994?" *See supra* ¶ 110.

150.   The "Viola stuff" folder included a printout from the URL <http://www.w3.org/History/1994/WWW/WorkingNotes/>. This webpage has a heading for the "WWWWizardsWorkshop" "Cambridge, Mass, July 1993" and includes links to "Announcement," "Agenda," and "Photos of attendees."

151.   "WWWWizardsWorkshop" refers to the World-Wide Web Wizards Workshop held in Cambridge, Massachusetts on July 28–30, 1993, that Pei Wei attended. *See supra* ¶¶ 131-143.

152.   The "Announcement" link links to a webpage at <http://www.w3.org/History/1994/WWW/WorkingNotes/1993_Workshop/Announcement.html> that states that "Interactive objects" would be discussed at the Wizards workshop.

153.   The "Agenda" link links to a webpage at <http://www.w3.org/History/1994/WWW/WorkingNotes/1993_Workshop/Agenda.html>

that states that "Interactive objects" was on the agenda for discussion at the Wizards workshop.

154.   The webpages for the Wizards workshop corroborate Pei Wei's statement to Doyle on August 21, 1995, that the plotting demo described in the Viola paper dated August 16, 1994, was "shown to a bunch of attendees at the first Web Conference in Cambridge" "around August 93" — over one year before the application for the '906 patent was filed. *See supra* ¶ 128.

155.   The "Viola stuff" folder included a printout of a webpage with a link to the source code for viola-2.1.2, archived on September 2, 1993 — over one year before the application for the '906 patent was filed.

156.   The "Viola stuff" folder included a printout of a webpage with the "README" file for viola-2.1.2. The date at the top of the "README" file is July 27, 1992. The "README" file includes instructions for building the binary code for the "viola" program, and instructions for running the ViolaWWW browser. The "README" file states at the bottom:

> Comments and questions:
>
> Please send WWW specific bugs to www-bugs@info.cern.ch, general comments to www-talk@info.cern.ch, and anything to wei@xcf.Berkeley.EDU.
>
> Pei Y. Wei
> wei@xcf.berkeley.edu

157.   The "Viola stuff" folder included a printout of a message that Pei Wei had sent to the publicly-accessible WWW-talk e-mail distribution list on January 28, 1994, that included the following statements: "Right now, the ViolaWWW that is under development can embed viola objects/applications inside of HTML documents."

158.   The "Viola stuff" folder included a printout of a message that Pei Wei had

sent to the publicly-accessible WWW-talk e-mail distribution list on February 25, 1994,

that included the following statements:

> The new ViolaWWW is now available for ftp'ing. It's beta and feedback is very welcomed. The README file follows…
>
> ===
> ViolaWWW, Version 3.0 Beta   Feb 23 1994
> =======================
>
> ViolaWWW is an extensible World Wide Web hypermedia browser for XWindows.
>
> . . . .
>
> Notable features in the new ViolaWWW
> ---
>
> . . . .
>
> * Embeddable in-document and in-toolbar programmable viola objects. A document can embed mini viola applications (ie: a chess board), or can cause mini apps to be placed in the toolbar.
>
> . . . .
>
> Availability
> ---------------
>
> Source and binary can be found in ftp://ora.com/pub/www/viola. Sparc binary is supplied.
>
> . . . .
>
> Pei Y. Wei (wei@ora.com)
> O'Reilly & Associates, Inc.

159.   The "Viola stuff" folder included a printout from the URL

<http://xcf.berkeley.edu/ht/projects/viola/>. The printout included the following

statements:

ViolaWWW, Version 3.1 Beta   Mar 23 1994
=========================

ViolaWWW is an extensible World Wide Web hypermedia
browser for XWindows.

. . . .

Notable features in the new ViolaWWW

. . . .

* Embeddable in-document and in-toolbar programmable viola
objects. A document can embed mini viola applications (ie: a
chess board), or can cause mini apps to be placed in the toolbar.

. . . .

Availability

Source and binary can be found in ftp://ora.com/pub/www/viola.
Sparc binary is supplied.

. . . .

Pei Y. Wei (wei@ora.com)
O'Reilly & Associates, Inc.

160.   The "Viola stuff" folder included a printout from the URL

<http://xcf.berkeley.edu/ht/projects/viola/docs/viola/>. One of the files listed in the

printout is named "plotDemo.html".

161.   The "Viola stuff" folder included a printout from the URL

<http://xcf.berkeley.edu/ht/projects/viola/docs/objs/>. One of the files listed in the

printout is named "plot.v".

162.   The following is a screenshot of the ViolaWWW browser after parsing the

file plotDemo.html:

163.   The files plotDemo.html and plot.v include code for the plotting demo described in the Viola paper dated August 16, 1994. *See supra* ¶ 100.

164.   The file plotDemo.html specifies the location of the file plot.v, which in turn specifies the location of a separate executable application named vplot.

165.   Pei Wei had told Doyle on August 31, 1994 how the plotting demo worked: "[A]s for the plotting demo, it actually is really just a front-end that fires up a back-end plotting program (and the point is that that back-end could very well be running on a remote super computer instead of the localhost). For that demo, there is a simple protocol such that the front-end app could pass an X window ID to the back-end, and the

back-end draws the graphics directly onto the window violaWWW has opened for it."

See supra ¶ 113.

166.   Pei Wei had told Doyle on August 31, 1994, *see supra* ¶ 103, and again on

August 21, 1995, *see supra* ¶ 128, that the plotting demo described in the Viola paper

dated August 16, 1994, was the "very one" demonstrated "to visitors from a certain

computer manufacturer" by May 8, 1993.

167.   When Pei Wei referred to a demonstration "by May 8, 1993," he was

referring to the demonstration of the plotting demo to two Sun Microsystems employees

that the Federal Circuit has held "was a public use under [35 U.S.C. § 102(b)]." 399 F.3d

1325, 1335 (Fed. Cir. 2005).

168.   Thus, during prosecution of the '906 patent, Doyle knew about Pei Wei's

demonstration of the plotting demo that the Federal Circuit has held was a "public use"

under 35 U.S.C. § 102(b); Doyle knew how the plotting demo worked; and Doyle had

access to the code for that plotting demo.

169.   During prosecution of the '906 patent, Doyle printed webpages containing

information about a talk that Pei Wei gave at Stanford University in Northern California

in September 1994.

170.   The webpages that Doyle printed included the following statements and

graphic:

WWW Browsers: Extensibility Issues

Pei Wei, <u>O'Reilly & Associates</u>

Stanford Computer Forum WWW Workshop - September 20-21, 1994

. . . .

Extensibility in WWW Browsers

The WorldWideWeb is a powerful medium which has many applications beyond just publishing static documents. It is certainly an interface to the space of "documents." But already, with established features such as input-forms and server-side scripting, we see that the web is also increasingly becoming an interface to the space of what is traditionally called "applications."

. . . .

In this talk I'll describe a few possible approaches for a browser to gain more flexibility, and to briefly describe one particular approach as implemented by a system known as ViolaWWW.

. . . .

Possible Ways to Extend Browsers

We already do "extend" browsers with things like "external viewers." But there's not a very good integration with the browser. Ideally those external viewers should be rendering in-place inside the document, and be working together with the browser, be tightly integrated with the browser and other parts…

. . . .

Work at O'Reilly & Associates: VIOLA-WWW

. . . .

This is the Viola system that is being developed at O'Reilly and Associates. This system has the following interesting characteristics:

. . . .

Three, program objects can be embedded into documents and the toolbar. . . .

. . . .

The next example is a front-end application to a backend. And the back-end is what actually does the computation and the drawing.

. . . .

171.   There was no limitation, restriction or obligation of secrecy on anyone attending the talk that Pei Wei gave at Stanford University in September 1994.

172.   The plotting demo described in the talk at Stanford University in September 1994 is the same plotting demo described in the Viola paper dated August 16, 1994. *See supra* ¶ 100.

173.   Pei Wei had told Doyle on August 31, 1994, *see supra* ¶ 103, and again on August 21, 1995, *see supra* ¶ 128, that the plotting demo described in the Viola paper dated August 16, 1994, was the "very one" demonstrated "to visitors from a certain computer manufacturer" by May 8, 1993.

174.   When Pei Wei referred to a demonstration "by May 8, 1993," he was referring to the demonstration of the plotting demo to two Sun Microsystems employees that the Federal Circuit has held "was a public use under [35 U.S.C. § 102(b)]." 399 F.3d 1325, 1335 (Fed. Cir. 2005).

175.   Thus, during prosecution of the '906 patent, Doyle was repeatedly confronted with evidence that the ViolaWWW browser was material prior art under 35 U.S.C. § 102(b), yet Doyle never disclosed the ViolaWWW browser to the Patent Office during prosecution of application number 08/324,443, which matured into the '906 patent.

176.   The ViolaWWW browser was material to the patentability of the claimed inventions in the '906 patent.

177.   There is a remarkable similarity between the ViolaWWW browser and the preferred embodiment of the '906 patent:

Both the ViolaWWW browser (on the left) and the preferred embodiment of the '906

patent (on the right) enabled a user to interact with a 3-dimensional image embedded in

the middle of a webpage. In the ViolaWWW screenshot above, there are three slide

controls to the right of the embedded image that move up and down; these rotate the

embedded image on the X, Y, and Z axes. Similarly, in the preferred embodiment of the

'906 patent shown above, box 354 has three slide controls to the right of the embedded

image that rotate the image on the X, Y, and Z axes. Thus, ViolaWWW, like the '906

patent, teaches a browser capable of displaying embedded interactive objects.

178.   The Manual of Patent Examining Procedure in force at the time the

application for the '906 patent was filed included the following statements:

> Materiality is defined in 37 CFR 1.56(b) and discussed herein at
> MPEP § 2001.05. In addition to prior art such as patents and
> publications, 37 CFR 1.56 includes, for example, information on
>
> ***possible prior public uses***, sales, offers to sell, derived knowledge,
> ***prior invention by another***, inventorship conflicts, and the like.
> [emphasis in bold added]

179.   The Manual of Patent Examining Procedure in force today contains

similar language:

> Materiality is defined in 37 CFR 1.56(b) and discussed herein at
> MPEP § 2001.05. In addition to prior art such as patents and
> publications, 37 CFR 1.56 includes, for example, information on
> >enablement,< ***possible prior public uses***, sales, offers to sell,
> derived knowledge, ***prior invention by another***, inventorship
> conflicts, and the like. >"Materiality is not limited to prior art but
> embraces *any* information that a reasonable examiner would be
> substantially likely to consider important in deciding whether to
> allow an application to issue as a patent." *Bristol-Myers Squibb
> Co. v. Rhone-Poulenc Rorer, Inc.*, 326 F.3d 1226, 1234, 66
> USPQ2d 1481, 1486 (Fed. Cir. 2003) (emphasis in original)
> (finding article which was not prior art to be material to
> enablement issue).< [emphasis in bold added]

180. The Federal Circuit has confirmed that the ViolaWWW browser was material to the patentability of the claimed inventions in the '906 patent.

181. The Federal Circuit held that a reasonable jury could find at least claims 1 and 6 of the '906 patent anticipated by the ViolaWWW browser under 35 U.S.C. § 102(a), (b), and/or (g). *See* 399 F.3d 1325, 1329, 1332–35 (Fed. Cir. 2005).

182. The Federal Circuit held that "Wei's May 7, 1993 demonstration to two Sun Microsystems employees without confidentiality agreements was a public use under [35 U.S.C. § 102(b)]." 399 F.3d 1325, 1335 (Fed. Cir. 2005).

183. The Federal Circuit held that a reasonable jury could find at least claims 1 and 6 of the '906 patent obvious in light of the ViolaWWW browser. *See* 399 F.3d 1325, 1335 (Fed. Cir. 2005).

184. The Federal Circuit held that a district court could find that Doyle had committed inequitable conduct by failing to disclose the ViolaWWW browser to the Patent Office. *See* 399 F.3d 1325, 1336 (Fed. Cir. 2005).

185. The Patent Office has also confirmed that the ViolaWWW browser was material to the patentability of the claimed inventions in the '906 patent.

186. On or about July 30, 2007, during the 2005 reexamination of the '906 patent, the Patent Office rejected all claims of the '906 patent as being anticipated by DX95, which includes a copy of the text found in Pei Wei's Viola paper dated August 16, 1994, *see supra* ¶ 100.

187. Pei Wei had told Doyle on August 31, 1994, about the Viola paper dated August 16, 1994, *see supra* ¶¶ 97-100, and Doyle had downloaded and read that paper

the same day, *see supra* ¶¶ 101, 107-109, yet Doyle never disclosed the Viola paper to the Patent Office during the original examination of the '906 patent.

188.   The fact that Doyle may have conceived of the inventions claimed in the '906 patent before August 16, 1994, does not render the Viola paper immaterial, because the Viola paper describes features of the ViolaWWW browser that existed before the invention date for the '906 patent and/or over one year before the application for the '906 patent was filed.

189.   For example, the plotting demo described in the Viola paper dated August 16, 1994, was part of the ViolaWWW browser software that was demonstrated to Sun Microsystems on May 7, 1993 — over one year before the application for the '906 patent was filed. *See supra* ¶¶ 103-106.

190.   None of the claimed inventions in the '906 patent was conceived before August 1993.

191.   Thus, the ViolaWWW browser software that was described in the Viola paper dated August 16, 1994, and demonstrated to Sun Microsystems on May 7, 1993, also corroborates anticipation of the claimed inventions in the '906 patent under 35 U.S.C. § 102(g).

192.   Neither reexamination of the '906 patent considered whether the claimed inventions were anticipated by "Wei's May 7, 1993 demonstration to two Sun Microsystems employees without confidentiality agreements" which the Federal Circuit has held was a "public use under [35 U.S.C. § 102(b)]." 399 F.3d 1325, 1335 (Fed. Cir. 2005).

193.   In an ex parte reexamination, "[r]ejections will not be based on matters other than patents or printed publications, such as public use." *See* Manual of Patent Examining Procedure (MPEP) § 2258(I).

194.   The Patent Office had the authority during the original examination of the '906 patent to issue a rejection based on the "public use" provision of 35 U.S.C. § 102(b), but Doyle never disclosed to the Patent Office during that examination the evidence he had in his possession that the ViolaWWW browser was in "public use" more than one year before the application for the '906 patent was filed.

195.   On information and belief, the Patent Office would not have allowed the claims of the '906 patent if Doyle had not engaged in inequitable conduct and instead had fulfilled his duty of candor and good faith in dealing with the Patent Office.

196.   During prosecution of application number 08/324,443, which matured into the '906 patent, Doyle withheld extensive evidence about the ViolaWWW browser.

197.   For example, Doyle failed to disclose the following material information: the message from Raggett about the ViolaWWW browser and embedded objects, *see supra* ¶¶ 90-93; the communications with Pei Wei in 1994 about the ViolaWWW browser and the embedded interactive plotting demo that was in public use in May 1993, *see supra* ¶¶ 95-113; the Viola paper describing the ViolaWWW browser and the embedded interactive plotting demo that was in public use in May 1993, *see supra* ¶¶ 97-100; the communications with Pei Wei in 1995 about the ViolaWWW browser and the embedded interactive plotting demo that was in public use in May 1993 and again at the Wizards conference in July 1993, *see supra* ¶¶ 125-143; the contents of the "Viola stuff" folder that Doyle maintained, which included information about the Wizards conference

in July 1993 and links to the ViolaWWW browser software, including source code for the embedded interactive plotting demo that was in public use in May 1993, *see supra* ¶¶ 147–168; and Pei Wei's talk at Stanford in September 1994 about the embedded interactive plotting demo that was in public use in May 1993, *see supra* ¶¶ 169–175.

198.   Doyle withheld information about the ViolaWWW browser with the specific intent to deceive the Patent Office.

199.   Doyle had a financial interest in the patentability of the claimed inventions in the '906 patent. *See supra* ¶¶ 75-83.

200.   The ViolaWWW browser threatened the patentability of the claimed inventions in the '906 patent, and thus threatened Doyle's financial interests.

201.   Doyle was personally involved in the prosecution of application number 08/324,443, which matured into the '906 patent.

202.   For example, Doyle signed a declaration on or about November 22, 1994, stating that he was an inventor and acknowledging his duty of candor and good faith in dealing with the Patent Office. *See supra* ¶ 122.

203.   On or about January 2, 1997, Doyle signed a declaration that was submitted to the Patent Office in an effort to establish an earlier date of invention for the claims of the '906 patent application.

204.   On or about February 24, 1997, Doyle participated in an examiner interview in an effort to secure allowance of the claims of the '906 patent application.

205.   On or about May 27, 1997, Doyle signed a 28-page declaration (including an appendix) that was submitted to the Patent Office in an effort to establish himself as an

"expert" in the subject matter of the claimed invention and to overcome various obviousness rejections to the claims of the '906 patent application.

206.   On or about October 29, 1997, Doyle signed another declaration that was submitted to the Patent Office in an effort to establish an earlier date of invention for the claims of the '906 patent application.

207.   On or about November 6, 1997, Doyle participated in another examiner interview in an effort to secure allowance of the claims of the '906 patent application.

208.   The prosecuting attorney for the '906 patent lacked a technical degree in computer science or electrical engineering, and thus he relied on Doyle to understand and describe the subject matter of the claimed invention and the prior art.

209.   Doyle personally reviewed and approved papers submitted to the Patent Office during prosecution of the '906 patent.

210.   Despite Doyle's extensive personal involvement in the prosecution of application number 08/324,443, which matured into the '906 patent, Doyle never disclosed the ViolaWWW browser to the Patent Office during that prosecution.

211.   The circumstances of Doyle's actions demonstrate an intent to deceive the Patent Office.

212.   For example, during prosecution of the '906 patent, Doyle made arguments for patentability that could not have been made if he had disclosed the ViolaWWW browser to the Patent Office.

213.   On or about May 6, 1996, the Patent Office rejected several claims as being anticipated by the University of Southern California's "Mercury Project."

214.   On or about August 6, 1996, a response to this rejection was submitted to the Patent Office.

215.   Doyle personally reviewed and approved the response submitted to the Patent Office on or about August 6, 1996.

216.   The response submitted on or about August 6, 1996, included the following statements:

> The claimed combination is fundamentally different from the Mercury Project. In the claimed combination, the external object and executable object are embedded by reference in the HTML document and the object is displayed and processed within the same window where a portion of the original document is displayed. In the Mercury Project information is passed back to the server and a new document is generated and displayed. There is no display and processing the external object within the window in which a portion of the original document is displayed.

217.   If Doyle had disclosed the ViolaWWW prior art to the Patent Office, it would not have been possible to distinguish the claims of the '906 patent over the prior art on the basis that the prior art failed to disclose "display[ing] and processing the external object within the window in which a portion of the original document is displayed."

218.   On or about March 26, 1997, the Patent Office rejected several claims as being obvious in light of "Khoyi et al. US Patent 5,206,951" in combination with other prior art.

219.   On or about June 2, 1997, a response to this rejection was submitted to the Patent Office.

220.   Doyle personally reviewed and approved the response submitted to the

Patent Office on or about June 2, 1997.

221.   The response submitted on or about June 2, 1997, included the following

statements:

> [T]here is no suggestion in Khoyi of modifying Mosaic so
> that an external application . . . is invoked to display and
> interactively process the object within the document
> window while the document is displayed by Mosaic in the
> same window.

222.   If Doyle had disclosed the ViolaWWW prior art to the Patent Office, it

would not have been possible to distinguish the claims of the '906 patent over the prior

art on the basis that the prior art failed to disclose "an external application [that] is

invoked to display and interactively process the object within the document window

while the document is displayed by [the browser] in the same window."

223.   On or about August 25, 1997, the Patent Office rejected several claims as

being obvious in light of "Koppolu et al. US Patent 5,581,686" in combination with other

prior art.

224.   On or about December 23, 1997, a response to this rejection was

submitted to the Patent Office.

225.   Doyle personally reviewed and approved the response submitted to the

Patent Office on or about December 23 1997.

226.   The response submitted on or about December 23, 1997, included the

following statements:

> [T]here is no disclosure or suggestion in Mosaic or
> Koppolu of automatically invoking an external application
> when an embed text format is parsed. Each of those
> references require user input, specifically clicking with a

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mouse pointer, to activate external applications to allow
display and interaction with an external object.

227. If Doyle had disclosed the ViolaWWW prior art to the Patent Office, it would not have been possible to distinguish the claims of the '906 patent on the basis that the prior art failed to disclose "automatically invoking an external application when an embed text format is parsed."

228. Doyle's repeated use of arguments that could not have been made if Doyle had disclosed the ViolaWWW prior art demonstrates an intent to deceive the Patent Office.

229. Doyle's intent to deceive the Patent Office is also demonstrated by comparing what he told an audience of web developers on or about March 27, 1995, to what he told the Patent Office on or about May 27, 1997.

230. On or about March 27, 1995, Doyle responded to a post on the publicly-accessible WWW-talk e-mail distribution list in which another author had written, under the heading "HotJava is here! And it *rocks*," "It's the most exciting thing to happen to the Web since viola." Doyle's response included the following statements:

> If you take a close look at Java, you'll realize that it bears a close similarity to Viola, since the "applets" must be coded from a predefined language, downloaded and locally interpreted.

231. On or about May 27, 1997, Doyle signed a declaration that was submitted to the Patent Office. Doyle's declaration included the following statements:

> The three exemplary products which incorporate the features of the claimed invention include Netscape Navigator 2.0 (or newer versions), Java, from Sun Microsystems, and ActiveX, from Microsoft. . . . [T]he success of these products is directly attributable to the claimed features of the invention.

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. . . .

A good indicator that Sun Microsystems felt that enabling interactivity in Web pages was the key feature of Java is given in the first chapter of "Hooked on Java," which was written by members of the original Java development team. They say, "With applets written in the Java programming language, Web users can design Web pages that include animation, graphics, games, and other special effects. **Most important, Java applets can make Web pages highly interactive."**

This statement shows that the developers of Java felt that the most important feature of the Java technology was the ability of Java to allow an embed text format (the applet tag) within a Web document to be parsed by a Web browser to automatically invoke an external executable application to execute on the client workstation in order to display an external object and enable interactive processing of that object within a display window created at the applet tag's location within the hypermedia document being displayed in the browser-controlled window. The book's authors further emphasize the novelty and nonobviousness of this technology when they say, "Quite simply, Java-powered pages are Web pages that have Java applets embedded in them. They are also the Web pages with the coolest special effects around .... Remember, **you need a Java-compatible Web browser such as HotJava to view and hear these pages and to interact with them; otherwise, all you'll access is static Web pages** minus the special effects."

. . . .

The above citations, as well as the additional details given in Appendix A, provide ample evidence of the commercial success of products incorporating features of the claimed invention, as well as evidence of the widespread acclaim that these products have garnered for the technical innovations which the features of the claimed invention allowed them to provide. They further show that the successes of these products was a direct result of the features of the claimed invention, which they incorporated *through implementation of an embed text format that is parsed by a Web browser to automatically invoke an external executable application to execute on the client workstation in order to display an external object and*

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> *enable interactive processing of that object within a display window created at the embed text format's location within the hypermedia document being displayed in the browser-controlled window*.

232. The declaration Doyle signed on or about May 27, 1997, made no mention of Viola or the ViolaWWW browser.

233. Doyle's disclosure of Java for purposes of commercial success, but not the ViolaWWW browser which Doyle knew was prior art that existed over one year before the application for the '906 patent was filed, demonstrates an intent to deceive the Patent Office, especially given Doyle's belief that Viola was similar to Java and that Java embodied the claimed invention.

234. Between 1999 and 2003, a third party disputed the validity of the '906 patent.

235. Doyle personally guided Eolas through the litigation concerning the validity of the '906 patent.

236. Throughout the litigation, the third party asserted that the plotting demo involving the ViolaWWW browser anticipated the asserted claims of the '906 patent.

237. The plotting demo relied on by the third party to prove anticipation of the asserted claims of the '906 patent was the same plotting demo that Pei Wei had repeatedly described to Doyle, *see supra* ¶¶ 96–106, 126–130, and which the Federal Circuit has held was a "public use" on May 7, 1993, 399 F.3d 1325, 1335 (Fed. Cir. 2005), and which Doyle himself came across from his own research into Viola, *see supra* ¶¶ 160–175.

238.   In its contentions that the plotting demo involving the ViolaWWW browser anticipated the asserted claims of the '906 patent, the third party specifically identified the VOBJF tag, the plot.v file, and the vplot executable application.

239.   For example, on or about December 14, 2001, the third party served an expert report by Dr. John P.J. Kelly, that included the following statements:

> When ViolaWWW encountered the tag <VOBJF>/usr/work/viola/apps/plot.v</VOBJF>, an embed text format specifying the location of an object, it looked in the specified path for at least part of the object, parsed the path, and automatically loaded the object into the program. The file (plot.v) also contained type information associated with the object, such as the name and location of an external executable application, vplot, that also was automatically invoked to enable display of and user interaction with the object at a location within a display area within the document being displayed in the browser-controlled window corresponding to the location of the embed text format in the document. Subsequently, when the user interacted with the object, ViolaWWW sent messages to vplot based on the user input and received output from vplot, thus updating the display of the object.

240.   Similarly, at a trial in 2003 concerning the validity of the '906 patent, Dr. Kelly testified that the plotting demo involving the ViolaWWW browser anticipated the asserted claims of the '906 patent, and he specifically identified the VOBJF tag, the plot.v file, and the vplot executable application for purposes of his anticipation analysis.

241.   Pei Wei also testified at the trial in 2003 about the ViolaWWW browser and the plotting demo.

242.   At the trial, exhibit DX34 included source code for the ViolaWWW browser dated May 12, 1993.

243.   At the trial, exhibit DX37 included source code for the ViolaWWW browser dated May 27, 1993.

244.   DX34 contains the code for the plotting demo that Pei Wei demonstrated to Sun Microsystems on May 7, 1993, in Northern California.

245.   DX37 contains code for a plotting demo similar to the plotting demo in DX34.

246.   On May 31, 1993, Pei Wei posted DX37 on a publicly-accessible Internet site and notified an engineer at Sun Microsystems that DX37 was available for downloading.

247.   Under 35 U.S.C. § 102(b), DX37 was a "printed publication" over one year before the application for the '906 patent was filed.

248.   Dr. Kelly testified that the plotting demo in DX34 and DX37 anticipates the asserted claims of the '906 patent. Dr. Kelly specifically identified the VOBJF tag, the plot.v file, and the vplot executable application for purposes of his anticipation analysis of DX37.

249.   The Federal Circuit has held that Dr. Kelly's testimony would allow a reasonable jury to conclude that DX37 anticipates at least claims 1 and 6 of the '906 patent. *See* 399 F.3d 1325, 1335 (Fed. Cir. 2005).

250.   Neither Dr. Kelly nor the third party ever relied on anything other than the plotting demo involving plot.v and vplot to prove anticipation by the ViolaWWW browser.

251.   For example, Dr. Kelly never discussed clock.v during the trial in July and August 2003.

252.   Doyle attended the trial involving the third party held in July and August 2003.

253. By the end of the trial in August 2003, Doyle knew about and understood the third party's contention that the plotting demo involving the ViolaWWW browser in DX37 anticipated the asserted claims of the '906 patent.

254. By the end of the trial in August 2003, Doyle knew about and understood Pei Wei's testimony that on May 31, 1993 — over one year before the application for the '906 patent was filed — he posted DX37 on a publicly-accessible Internet site and notified an engineer at Sun Microsystems that DX37 was available for downloading.

255. During the 2003 reexamination of the '906 patent, Doyle concealed material information about the ViolaWWW plotting demo that Pei Wei and an expert had repeatedly contended anticipated the '906 patent

256. On or about October 30, 2003, the Director of the Patent Office initiated a reexamination of the '906 patent. The control number for this reexamination was 90/006,831.

257. During the 2003 reexamination, Doyle withheld information about the ViolaWWW browser with the specific intent to deceive the Patent Office.

258. Doyle had a financial interest in the patentability of the claimed inventions in the '906 patent. *See supra* ¶¶ 75–83.

259. The ViolaWWW browser threatened the patentability of the claimed inventions in the '906 patent, and thus threatened Doyle's financial interests.

260. Doyle was personally involved in the 2003 reexamination of the '906 patent.

261. For example, on or about April 27, 2004, Doyle participated in an examiner interview in an effort to confirm the patentability of the claims of the '906

patent application. Doyle gave the examiner a presentation supported by approximately 22 slides, none of which discussed DX37 or the ViolaWWW browser.

262.   On or about May 6, 2004, Doyle signed a declaration that was submitted to the Patent Office in an effort to confirm the patentability of the claims of the '906 patent application. This declaration made no mention of DX37 or the ViolaWWW browser.

263.   On or about August 18, 2005, Doyle participated in an examiner interview in an effort to confirm the patentability of the claims of the '906 patent application. Doyle gave the examiner a presentation supported by approximately 36 slides, none of which discussed DX37 or the ViolaWWW browser.

264.   During the 2003 reexamination, Doyle submitted selected information from the litigation with the third party concerning the validity of the '906 patent, but he withheld information that would have identified for the examiner the key features of the prior art ViolaWWW browser and how they matched up to the asserted claims of the '906 patent. This proved critical during the 2003 reexamination because when the examiner decided to look at the source code for the ViolaWWW browser, he missed the key points.

265.   On or about December 30, 2003, Doyle submitted to the Patent Office a CD containing two compressed zip files, one for the "DX34" version of the ViolaWWW source code dated May 12, 1993, and the other for the "DX37" version of the ViolaWWW source code dated May 27, 1993.

266. The compressed zip file for DX34 that Doyle submitted to the Patent Office was named viola930512.tar.gz.zip. When unzipped, it contained 1,027 files in 35 folders consisting of 8 total megabytes in size.

267. The compressed zip file for DX37 that Doyle submitted to the Patent Office was named violaTOGO.tar.Z.zip. When unzipped, it contained 1,030 files in 34 folders consisting of 7.7 total megabytes in size.

268. DX34 and DX37 contained source code for the ViolaWWW browser.

269. Source code cannot be executed by a computer. Source code must be compiled into binary code before it can be executed by a computer.

270. Without the compiled binary code, and without a suitable computer capable of executing that binary code (such as a Sun SPARCstation from the early 1990s), the Patent Office had no practical way to see the ViolaWWW browser in operation.

271. Given the voluminous nature of the contents of DX34 and DX37, and the practical inability of the Patent Office to run the ViolaWWW browser on a computer, it was especially important for Doyle to be candid with the Patent Office about the contents of DX34 and DX37 so that the Patent Office could focus on the relevant files.

272. Doyle was not candid and instead withheld material information that would have assisted the Patent Office in understanding the contents of DX34 and DX37.

273. For example, during the 2003 reexamination, Doyle did not disclose to the Patent Office the trial testimony of Pei Wei, who testified about the plotting demo in DX34 and DX37, *see supra* ¶¶ 241–247; Doyle did not disclose the trial testimony of Dr. Kelly, who testified that the plotting demo in DX34 and DX37 anticipated the asserted

claims of the '906 patent, *see supra* ¶¶ 240, 248; and Doyle did not disclose that Dr. Kelly specifically identified the VOBJF tag, the plot.v file, and the vplot executable application for purposes of his anticipation analysis, *see supra* ¶ 239.

274.   On March 2, 2005 — while the 2003 reexamination was still pending — the Federal Circuit held that Dr. Kelly's testimony would allow a reasonable jury to conclude that DX37 anticipates at least claims 1 and 6 of the '906 patent. 399 F.3d 1325, 1335 (Fed. Cir. 2005).

275.   Even after the Federal Circuit's decision, however, Doyle still did not disclose Dr. Kelly's testimony to the Patent Office during the 2003 reexamination, nor did he disclose to the Patent Office that Dr. Kelly's anticipation analysis relied upon the VOBJF tag, the plot.v file, and the vplot executable application.

276.   On or about September 27, 2005, the examiner issued a statement for reasons of patentability in which the examiner confirmed the patentability of claims 1–10 of the '906 patent.

277.   The examiner's statement never discussed the plotting demo that Dr. Kelly had testified anticipated the asserted claims of the '906 patent.

278.   When the examiner considered DX37, the examiner did not know where to look or what to look for. There were too many files in DX37 for the examiner to read himself. Thus the examiner was forced to resort to running text searches across all the files in DX37 in the hope of stumbling across relevant information.

279.   The examiner used the "dtSearch" program to index and text search all DX37 files that contained textual content. *See* http://www.dtsearch.com/.

280. It is unclear what words the examiner searched for or how he came up with his search terms.

281. Doyle knew precisely what to look for, but he never told the examiner. For example, if Doyle had told the examiner to look for plot.v, the examiner's text searches would have quickly found the plotting demo that Dr. Kelly had testified anticipated the asserted claims of the '906 patent.

282. The examiner's text searches did not lead him to the plotting demo, but instead led him to a clock application that used the file clock.v.

283. The file clock.v is a script file that displays the image of a clock. The clock application does not involve any separate executable application. It just involves a webpage and the clock.v script file.

284. The examiner reasoned that a script file like clock.v does not satisfy the "executable application" requirement of the claims of the '906 patent, and thus the examiner concluded that DX37 does not anticipate the asserted claims of the '906 patent.

285. The ViolaWWW source code teaches two ways of creating interactive webpages using embedded applications. One way is by using a simple script file, such as clock.v. All that is required is a webpage (such as violaApps.hmml) and the script file (such as clock.v). No binary executable application is involved. The other way taught by the ViolaWWW source code does use a binary executable application (such as vplot) in addition to a webpage and a file that contains the object (such as plot.v). The examiner did not consider this second way during the 2003 reexamination; he only considered the first way, and thus erroneously confirmed the patentability of the asserted claims of the '906 patent.

286.   The examiner's reasons for patentability included the following

statements:

> The Viola system uses "C-like" Viola scripts that must be
> INTERPRETED by the browser and then TRANSLATED
> or CONVERTED into binary native executable machine
> code that can be understood by the CPU. Alternately, the
> Viola script is precompiled into intermediate byte-code
> form and the byte-code is interpreted (i.e., translated) into
> binary native executable machine code at runtime. This
> extra step of translation results in an unavoidable
> performance penalty, as interpreted applications run much
> slower than compiled native binary executable applications.

> Accordingly, the "C-like" Viola scripts (or corresponding
> byte-code representations) are not "executable
> applications" . . . .

287.   The examiner's reasoning overlooked the fact that the plotting demo in

DX37 does use a separate executable application: vplot.

288.   Doyle knew that the plotting demo used a separate executable application,

but Doyle did not bring this fact to the examiner's attention and instead allowed the

examiner to confirm the patentability of the claims of the '906 patent on the basis of an

incomplete understanding of DX37.

289.   Doyle knew that the plotting demo used a separate executable application

for at least the following reasons:

- The Viola paper dated August 16, 1994, which states "This next
  mini application front-ends a graphing process (on the same
  machine as the viola process)" and which shows the plot of a
  fighter jet in a window titled "XPlot." *See supra* ¶¶ 100-101.

- Pei Wei's message to Doyle on September 1, 1994, which included
  the following statements: "[A]s for the plotting demo, it actually is

really just a front-end that fires up a back-end plotting program (and the point is that that back-end could very well be running on a remote super computer instead of the localhost). For that demo, there is a simple protocol such that the front-end app could pass an X window ID to the back-end, and the back-end draws the graphics directly onto the window violaWWW has opened for it." *See supra* ¶ 113.

- The source code listed in the "Viola stuff" file included the file plotDemo.html, which states, "This is a demo of ViolaWWW embedding a viola front-ending object that is programmed to start up and communicate with a plot process. The front-end tells the plot program the window ID to draw to, and gives it the camera coordinate changes." When the file plotDemo.html is parsed, it shows the plot of a fighter jet in a window titled "XPlot." *See supra* ¶¶ 160–162.

- Pei Wei's presentation at Stanford in September 1994, which included the following statements: "The next example is a front-end application to a backend. And the back-end is what actually does the computation and the drawing." Included with the presentation was a screenshot of the ViolaWWW browser after parsing the file plotDemo.html. The screenshot shows the plot of a fighter jet in a window titled "XPlot." The text in the webpage states, "This is a demo of ViolaWWW embedding a viola front-

ending object that is programmed to start up and communicate with a plot process. The front-end tells the plot program the window ID to draw to, and gives it the camera coordinate changes*." See supra* ¶ 170.

- The trial testimony of Pei Wei. *See supra* ¶ 241.

- The expert opinion of Dr. Kelly. *See supra* ¶¶ 239–240, 248.

290.   Doyle's failure to tell the examiner about the vplot and plot.v files, and failure to disclose documents from the litigation that identified how Dr. Kelly matched up the plotting demo in DX37 with the claims of the '906 patent, both alone and in combination with Doyle's prior failure to disclose the ViolaWWW browser during the original prosecution of the '906 patent, constituted a knowing and intentional violation of his duty of candor and good faith in dealing with the Patent Office.

291.   On information and belief, the Patent Office would not have confirmed the patentability of the claims of the '906 patent that were the subject of the 2003 reexamination if Doyle had not engaged in inequitable conduct and instead had fulfilled his duty of candor and good faith in dealing with the Patent Office.

292.   On or about December 22, 2005, a third party filed a request to reexamine the '906 patent.

293.   On or about February 9, 2006, the Patent Office granted the request to reexamine the '906 patent. The control number for this reexamination was 90/007,858.

294.   Doyle had a financial interest in the patentability of the claimed inventions in the '906 patent. *See supra* ¶¶ 75–83.

295.   The ViolaWWW browser threatened the patentability of the claimed inventions in the '906 patent, and thus threatened Doyle's financial interests.

296.   Doyle was personally involved in the 2005 reexamination of the '906 patent.

297.   For example, on or about September 6, 2007, Doyle participated in an examiner interview in an effort to confirm the patentability of the claims of the '906 patent application.

298.   On or about October 1, 2007, Doyle submitted a declaration to the Patent Office in an effort to establish an earlier date of invention for the claims of the '906 patent application.

299.   On or about May 9, 2008, Doyle participated in another examiner interview in an effort to confirm the patentability of the claims of the '906 patent application.

300.   On or about June 3, 2008, Doyle participated in another examiner interview in an effort to confirm the patentability of the claims of the '906 patent application.

301.   Doyle's inequitable conduct during the 2003 reexamination infected the 2005 reexamination.

302.   Although Doyle disclosed material information about the ViolaWWW browser to the Patent Office during the 2005 reexamination, by that time it was too late.

303.   For example, Doyle disclosed the Viola paper dated August 16, 1994, to the Patent Office on or about August 21, 2006.

304.   This was the first time Doyle had disclosed the Viola paper dated August 16, 1994 to the Patent Office.

305.   Doyle knew about the Viola paper no later than August 31, 1994, *see supra* ¶¶ 97–101, 108, but Doyle waited over 10 years — and two prosecutions of the '906 patent — to disclose that paper to the Patent Office.

306.   Shortly after Doyle disclosed the Viola paper dated August 16, 1994, to the Patent Office during the 2005 reexamination, the Patent Office rejected all claims of the '906 patent.

307.   In particular, on or about July 30, 2007, the Patent Office rejected all claims of the '906 patent as being anticipated by DX95, which includes a copy of the text found in Pei Wei's Viola paper dated August 16, 1994, *see supra* ¶ 100.

308.   The rejection based on the Viola paper dated August 16, 1994, confirms that the ViolaWWW browser was material prior art.

309.   Doyle did not respond to the merits of the rejection based on the Viola paper dated August 16, 1994, however. Instead Doyle filed a declaration asserting that his date of invention was before August 16, 1994.

310.   In response to Doyle's declaration, the examiner withdrew the rejection based on the Viola paper dated August 16, 1994.

311.   The 2005 examiner could have entered a new rejection based on DX37, which was a printed publication before the alleged conception of the inventions claimed in the '906 patent, but the 2005 examiner did not independently examine DX37 because the 2003 examiner had already concluded that DX37 did not invalidate the asserted claims of the '906 patent.

312.   The conclusions about DX37 reached in the 2003 reexamination were erroneous due to Doyle's inequitable conduct during that reexamination. *See supra* ¶¶ 264–290.

313.   Thus, Doyle's inequitable conduct during the 2003 reexamination infected the 2005 reexamination.

314.   During the original prosecution of the '906 patent, Doyle submitted a declaration to the Patent Office containing false and misleading statements in an effort to obtain allowance of the claims.

315.   Specifically, on or about June 2, 1997, Doyle submitted to the Patent Office a sworn declaration executed on or about May 27, 1997, for the purpose of overcoming the examiner's rejection on March 26, 1997.

316.   On page 12 of the declaration, Doyle asserted that his claimed invention would not have been obvious over the cited prior art in view of "secondary considerations, including, in part, commercial success of products incorporating features of the claimed invention and industry recognition of the innovative nature of these products."

317.   In support of his assertion, Doyle declared to the Patent Office that Sun Microsystems and Netscape had incorporated his invention into their Java software and Navigator Web browser, respectively. He stated: "Approximately 12 to 18 months after the applicants initially demonstrated the first Web plug-in and applet technology to the founders of Netscape and engineers employed by Sun Microsystems in November and December of 1993, as described in reference #4 from Appendix A (Dr. Dobb's Journal,

2/96), both Netscape and Sun released software products that incorporated features of the claimed invention . . . ."

318. This statement was false. Neither Doyle nor any of the other named inventors of the '906 patent demonstrated Web plug-in technology to any of the founders of Netscape in November or December of 1993.

319. When Doyle made these statements under oath, he also did not know whether any engineer employed by Sun Microsystems ever saw any of his demonstrations in November or December of 1993.

320. Doyle made these same false assertions in slides that he prepared and presented to the examiner in a personal interview on or about February 24, 1997. On a slide entitled "Relevant History of DHOE" (Doyle's name for his invention), Doyle included as a bullet point: "1993 Demos to Sun & Netscape's Founders."

321. Doyle's false statements in his declaration were material to the patentability of the pending claims. These statements purported to provide evidence of copying by others and thus objective evidence of nonobviousness, a factor to be considered in determining whether an alleged invention is patentable over the prior art. Without these false assertions, Doyle had no support for his argument that Netscape and Sun copied his alleged invention or that his technology was responsible for their commercial success.

322. By making these false statements under oath to the Patent Office, Doyle intended to mislead the Patent Office to believe that responsible persons at Netscape and Sun saw his alleged invention, appreciated its supposed merits, and therefore incorporated it into the Navigator browser and Java. Moreover, by making these false

statements, Doyle was trying to convince the Patent Office that the Netscape and Sun products succeeded because they incorporated his alleged invention.

323.   Doyle's submission of false statements under oath in his declaration to the Patent Office constituted a knowing and intentional violation of his duty of candor and good faith in dealing with the Patent Office.

324.   A judicial determination of the respective rights of the parties with respect to the unenforceability of the claims of the '906 Patent is now necessary and appropriate under 28 U.S.C. § 2201.

WHEREFORE, CDW respectfully prays that this honorable Court enter judgment in this cause as follows:

A.   Dismissing Plaintiff's Complaint in its entirety with prejudice and denying Plaintiff all relief;

B.   Declaring that each of the claims of the '906 and '985 patents is invalid;

C.   Declaring that CDW does not infringe any valid claim of the '906 or '985 patents which may be enforced against it;

D.   Awarding CDW all costs and attorneys' fees reasonably incurred in defending against this action;

E.   If the facts of this case warrant, declaring this case to be exceptional pursuant to Section 285 of Title 35 of the United States Code and awarding CDW its attorneys' fees reasonably incurred in defending against this action; and

F.   Awarding CDW such further relief as this honorable Court deems just and reasonable under the circumstances.

JURY DEMAND

CDW hereby requests trial by jury of all issues properly so triable.

Dated: January 18, 2011

Respectfully submitted,

 /s/SCOTT A. SANDERSON

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CERTIFICATE OF SERVICE

I, Scott A. Sanderson, an attorney, hereby certify that on January 18, 2010, I caused a copy of the foregoing DEFENDANT CDW LLC'S THIRD ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT, DEFENSES AND COUNTERCLAIMS to be electronically filed using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/SCOTT A. SANDERSON
Scott A. Sanderson