

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

<b>Eolas Technologies Incorporated,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Civil Action No. 6:09-cv-446</b>
	§	
<b>vs.</b>	§	
	§	
<b>Adobe Systems Inc., Amazon.com, Inc.,</b>	§	<b>JURY TRIAL</b>
<b>Apple Inc., Blockbuster Inc., CDW Corp.,</b>	§	
<b>Citigroup Inc., eBay Inc., Frito-Lay, Inc.,</b>	§	
<b>The Go Daddy Group, Inc., Google Inc.,</b>	§	
<b>J.C. Penney Company, Inc., JPMorgan</b>	§	
<b>Chase &amp; Co., New Frontier Media, Inc.,</b>	§	
<b>Office Depot, Inc., Perot Systems Corp.,</b>	§	
<b>Playboy Enterprises International, Inc.,</b>	§	
<b>Rent-A-Center, Inc., Staples, Inc., Sun</b>	§	
<b>Microsystems Inc., Texas Instruments</b>	§	
<b>Inc., Yahoo! Inc., and YouTube, LLC</b>	§	
	§	
<b>Defendants.</b>	§	

**NOTICE BY EOLAS OF CLAIMS DROPPED IN  
RESPONSE TO DECEMBER 21, 2010 ORDER**

On December 21, 2010, the Court issued an Order requiring the parties to meet and confer to, among other things, “narrow the number of disputed claims to a reasonable number.” Dkt. 536 at 2 (herein after “Order”). The Order also required the parties to “file a joint notice” regarding these issues. *Id.* In compliance with this Order, the parties met and conferred on these issues, and submitted a joint report to the Court on January 11, 2011. Dkt. 553.

As Eolas explained in the Joint Report:

Eolas has no intention of going to trial with all of the presently asserted claims. However, for the reasons set forth herein, Eolas is not yet able to determine which claims it is willing to drop, nor

will dropping claims meaningfully reduce the number of claim construction issues in dispute. Nonetheless, and as discussed herein, if the defendants comply with their discovery obligations, Eolas agrees to drop asserted claims by January 25, 2011, which is ten days prior to the date when Defendants must file their responsive claim construction brief.

Dkt. 553 at 3. Consistent with this, on January 25, 2011, Eolas sent correspondence to all defendants stating, in-part:

Pursuant to the Court's December 21, 2010 Order (dkt. 536) and in the interest of narrowing the number of claims at issue in this case, Eolas states that it will no longer assert the following claims against any Defendant in the above-captioned matter:

U.S. Patent No. 5,838,906: Claims 4, 5, 9, and 10

U.S. Patent No. 7,599,985: Claims 12, 13, 14, 15, 32, 33, 34, 35, 44, 45, 46, and 47

Eolas expects that by dropping these asserted claims, defendants will comply with their discovery obligations, and correct the numerous discovery shortcomings Eolas has identified. Eolas further expects that the Defendants will follow through on their promise to reduce the number of prior art references currently being asserted against Eolas.

Ex. A. Eolas therefore dropped 16 of the formerly asserted 61 claims, including 6 of 15 independent claims. This was significant and meaningful reduction in the number of asserted claims.

In addition to the claims already dropped, Eolas intends to further reduce the number of asserted claims after the defendants have provided Eolas with the discovery it has been seeking for months. *See* dkt. 553. *See also* Ex. B (letter outlining a subset of the outstanding discovery Eolas seeks from the defendants, including 37 of 39 depositions noticed since November 2010, which remain outstanding). The defendants have no legitimate reason why they have failed to provide discovery in a timely manner.<sup>1</sup>

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<sup>1</sup> The outstanding mandamus petition at the Federal Circuit does not provide an excuse for failing to timely schedule depositions and provide other discovery. *See* dkt. 247 at ¶ 14 ("No

Contrary to defendants' assertions, a further reduction in the number of asserted claims will not meaningfully reduce the claim construction issues in dispute. As Eolas explained in the Joint Notice, and as set forth in Eolas' opening claim construction brief:

[D]ropping asserted claims will not meaningfully reduce the number of claim construction disputes the Court must resolve. Dkt. 479 at 1. As shown in Eolas' Brief [dkt. 537], eight of the ten disputed issues of claim construction appear in every asserted claim of the patents-in-suit. Eolas' Brief at 8-26. And, the defendants' contention that various claims should be construed pursuant to 35 U.S.C. § 112, ¶ 6 is belied by the absence of the word "means" together with the numerous authorities cited by Eolas. *Id.* at 26-28. Defendants are unable to demonstrate otherwise. Therefore, a reduction in the number of asserted claims at this time will not meaningfully reduce the number of claim construction disputes the Court must resolve

Dkt. 553 at 3.

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Excuses. . . . Absent court order to the contrary, a party is not excused from disclosure because there are pending motions to dismiss, to remand or to change venue.”).

Dated: February 1, 2011.

**McKool Smith, P.C.**

/s/ Mike McKool

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