

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Eolas Technologies Incorporated,

Plaintiff,

vs.

No. 6:09-cv-00446-LED (filed Oct. 6, 2009)

Adobe Systems Inc.; Amazon.com, Inc.; Apple
Inc.; CDW Corp.; Citigroup Inc.; eBay Inc.;
Frito-Lay, Inc.; The Go Daddy Group, Inc.;
Google Inc.; J.C. Penney Corporation, 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.

Adobe Systems Inc.; Amazon.com, Inc.; Apple
Inc.; CDW LLC; eBay Inc.; Frito-Lay, Inc.; The
Go Daddy Group, Inc.; Google Inc.; J.C. Penney
Corporation, Inc.; JPMorgan Chase & Co.; New
Frontier Media, Inc.; Office Depot, Inc.; Perot
Systems Corp.; Playboy Enterprises
International, Inc.; Rent-A-Center, Inc.; Staples,
Inc.; Oracle America, Inc. f/k/a Sun
Microsystems, Inc.; Texas Instruments Inc.;
Yahoo! Inc.; and YouTube, LLC,

Counterclaimants,

vs.

Eolas Technologies Incorporated,

Counterdefendant.

**ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT OF
INTERVENING RIGHTS**

Upon consideration of Defendants' Motion for Partial Summary Judgment of Intervening Rights (Feb. 4, 2011), and the Court being fully advised in the matter, IT IS HEREBY ORDERED THAT:

1. Defendants' motion is granted.
2. As a result of the amendments made to overcome the Cohen prior art, claims 1–3, 6–8, and 11–14 in the C2 reexamination certificate for U.S. Patent No. 5,838,906 are not legally identical in scope to any claim in the '906 patent as originally issued, and thus there cannot be any infringement of claims 1–3, 6–8, and 11–14 before the C2 reexamination certificate issued on February 3, 2009. *See* 35 U.S.C. §§ 252, 307(b); *Bloom Eng'g Co. v. N. Am. Mfg. Co.*, 129 F.3d 1247, 1249–51 (Fed. Cir. 1997).
3. As a result of the amendments made to comply with the requirements of § 112, ¶ 2, claims 13–14 in the C2 reexamination certificate for U.S. Patent No. 5,838,906 are not legally identical in scope to any claim in the '906 patent as originally issued, and thus there cannot be any infringement of claims 13–14 before the C2 reexamination certificate issued on February 3, 2009. *See* 35 U.S.C. §§ 252, 307(b); *Bloom Eng'g Co. v. N. Am. Mfg. Co.*, 129 F.3d 1247, 1249–51 (Fed. Cir. 1997).

SO ORDERED.