

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.

JOINT NOTICE OF COMPLIANCE WITH PATENT RULE 4-5(d)

Pursuant to E.D. Tex. Patent Rule 4-5(d) and the April 9, 2010 Docket Control Order (Dkt. No. 249), the parties are “jointly submit[ting] a claim construction chart on computer disk in WordPerfect format” in advance of the March 3, 2011 *Markman* hearing in the above-captioned case.

Attached hereto as Exhibit A is a PDF copy of the Joint Claim Construction Chart setting forth the disputed claim terms for the claims of U.S. Patent No. 5,838,906 and U.S. Patent No. 7,599,985, and the constructions for such terms proposed by Plaintiff and Defendants. As set forth in their October 29, 2010 Joint Claim Construction and Prehearing Statement (Dkt. No. 479), the parties agreed to the constructions of several claim terms, and the agreed constructions for these terms are also reflected on the Joint Claim Construction Chart.

A computer disk containing the Joint Claim Construction Chart in WordPerfect format is separately being provided to the Court.

I. Eolas’s Statement

As explained in Eolas’ reply *Markman* brief (dkt. no. 581 at 1), aside from one cryptic footnote in Defendants’ responsive *Markman* brief, there is little to indicate that it reflects a wholesale abandonment of the constructions proposed by Defendants’ in the parties’ P.R. 4-3 statement and briefed by Eolas in its opening *Markman* brief. Dkt. No. 569 at 4 n.3. While styled in that footnote as a “streamlin[ing],” in fact almost all of Defendants’ proposals were substantially rewritten in February—after Eolas filed its opening *Markman* brief in December, Dkt. No. 537. These changes are explained in the tables within the body of Eolas’ reply *Markman* brief and are set forth in Exhibit A to Eolas’ reply *Markman* brief.

In its Opening *Markman* brief, Eolas indicated that it believed the term “client workstation” (and not merely “workstation” as advocated by defendants) should be construed by the Court. Dkt. No. 537 at 25. In their responsive *Markman* brief, the Defendants were afforded the opportunity to brief the “client workstation” term. Dkt. No. 569 at 24 n. 14. As Eolas explained in its reply *Markman* brief, because the term always appears within the claims as

“client workstation” (and never “workstation” alone), Eolas believes that the Court should construe the term “client workstation.” Dkt. 581 at 10.

II. Defendants’ Statement Regarding “Workstation”

The term for construction is “workstation,” *not* “client workstation.” Eolas never identified “client workstation” as a phrase for construction pursuant to P.R. 4-1, 4-2, or 4-3, so Defendants have never provided a construction for the phrase “client workstation.” *See* Exs. 1–4. The term for construction proposed by Defendants pursuant to P.R. 4-1 was “workstation,” *see* Ex. 1, so “workstation” is the term that both parties construed pursuant to P.R. 4-2 and 4-3, *see* Exs. 2–4, and “workstation” is the term Defendants addressed in their Claim Construction Brief, *see* Dkt. No. 569 at 24–25. Defendants’ proposed construction for “workstation” is included in Exhibit A.

With respect to Eolas’s first paragraph above, that issue was addressed in the parties’ claim construction briefs. As Defendants explained in their brief: “To focus the disputes as framed by Eolas’s opening brief, and to simplify the issues for the Court to decide, Defendants have streamlined their proposed constructions for several claim terms.” Dkt. No. 569 at 4 n.3. Given this Court’s strict page limit of 30 pages for claim construction briefing, and given that Eolas chose to sue 21 unrelated defendants in the same case, there was simply not room for the 21 unrelated Defendants in this case to address all of the many claim construction issues that each Defendant would have chosen to address if given the choice. Thus, Defendants were forced to shorten some of their proposed constructions (and the supporting arguments) to comply with the 30-page limit.

DATED: February 28, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on February 28, 2011. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ Michael E. Jones

Michael E. Jones