Exhibit 3

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

EOLAS' PRELIMINARY CLAIM CONSTRUCTION
AND PRELIMINARY IDENTIFICATION OF EXTRINSIC EVIDENCE FOR
CONSTRUCTION

In compliance with Patent Rule 4-2 and the Court's Docket Control Order of April 9,

2010 (Dkt. 249) Plaintiff Eolas Technologies Inc., ("Eolas") hereby serves upon Defendants

Adobe Systems Incorporated; Amazon.com, Inc.; Apple, Inc.; Blockbuster Inc.; CDW

Corporation; Citigroup Inc.; eBay, Inc.; Frito-Lay, Inc.; Google Inc.; J.C. Penney Company, Inc.;

JPMorgan Chase & Co.; New Frontier Media, Inc.; Office Depot, Inc.; Oracle America, Inc.

f/k/a Sun Microsystems, Inc.; Perot Systems Corp.; Playboy Enterprises International, Inc.; Rent-

A-Center, Inc.; Staples, Inc.; Texas Instruments, Inc.; The Go Daddy Group, Inc.; Yahoo! Inc.;

and YouTube, LLC their Preliminary Claim Construction and Preliminary Identification of

Extrinsic Evidence for United States Patent No 5,838,906 ("the '906 patent") and United States Patent No. 7,599,985 ("the '985 patent").

Eolas sets forth in Exhibit A its preliminary proposed construction for the terms, phrases, or clauses identified by the parties under Local Patent Rule 4-1 for those terms, phrases, or clauses that neither party has identified as implicating 35 U.S.C. § 112(6). Eolas reserves the right to amend and/or supplement its preliminary constructions. This disclosure further includes a preliminary identification of extrinsic evidence that may be relevant to the Court's construction of the claim terms. Eolas reserves the right to amend and/or supplement these disclosures with extrinsic evidence, including Defendants' own documentation, supporting the constructions proposed below or rebutting any constructions and/or extrinsic evidence proposed by Defendants.

Eolas contends that no claim limitations in any of the asserted claims of the patents in suit should be governed by 35 U.S.C. § 112(6). Nonetheless, Eolas sets forth in Exhibit B the corresponding structure for the terms, phrases, or clauses that the defendants identified as implicating 35 U.S.C. § 112, ¶6. This identification of corresponding structure is provided only in the alternative. Eolas reserves the right to amend and/or supplement its preliminary identification of corresponding structure.

Eolas does not presently anticipate providing any testimony of any witness as to the meaning of any of the claims in contention.

Defendants have submitted for construction forty-one of the forty-two terms, phrases, or clauses that neither party has identified as implicating 35 U.S.C. § 112(6). Defendants have submitted for construction each of the fifty-one terms, phrases, or clauses that defendants alone have identified as implicating 35 U.S.C. § 112(6). Collectively, the defendants have therefore

proposed ninety-three terms, phrases, or clauses for construction. This is unnecessarily excessive.

In contrast to the defendants' excessive identification of claim terms, phrases, or clauses for construction, Eolas has proposed just three terms, phrases or clauses for construction. One of these three terms was already construed in Eolas' prior litigation with Microsoft and was affirmed by the Federal Circuit on appeal. *Eolas Techs. v. Microsoft Corp.*, 2000 U.S. Dist. LEXIS 18886, at *56 (N.D. Ill. Dec. 28, 2000) *aff'd* by *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1336 (Fed. Cir. 2005). The second of these three terms was already construed in Eolas' prior litigation with Microsoft. *Eolas Techs. v. Microsoft Corp.*, 2000 U.S. Dist. LEXIS 18886, at *56 (N.D. Ill. Dec. 28, 2000). The third term, "object," has also been proposed by the defendants for construction.

Judge Davis has previously found that forty-three terms to be construed is unreasonable. *I2 Techs., Inc. v. Oracle Corp.*, 6:09-CV-194, Dkt. 147 (E.D. Tex, Aug. 8, 2010) (order instructing the parties to "meet and confer and narrow the number of disputed terms to a reasonable number" and ordering the parties to file an amended P.R. 4-3 Statement within one week). We also refer the defendants to the Court's two Orders in this case denying unopposed and/or joint motions for leave to assert additional pages. *See* dkts. 323 and 402.[1]

Prior to conducting the meet and confer with Eolas required by P.R. 4-3, Eolas requests that the Defendants meet and confer amongst themselves to substantially reduce the volume of their proposed claim construction issues. Once the Defendants have meet and conferred as a

---

[1] As stated in dkt. 402: "The Local Rules' page limits ease the burden of motion practice on both the Court and the parties. This Court has hundreds of complex cases and deals with a large number of motions each year. It has become common practice for parties to regularly expect to exceed the District's page limits on nearly all briefs filed in this Court, which has placed an increased burden on the Court. Even small extensions combine to greatly increase the number of pages of briefing the Court must digest, as well as ruling on all of the motions to exceed page limits. Accordingly, the Court **DENIES** the motion."

group and reduced their number of proposed claim construction issues, we should move forward

with the meet and confer between the defendants and Eolas required by P.R. 4-3.

DATED: September 17, 2010.

Respectfully submitted,
McKOOL SMITH, P.C.

/s/ Josh Budwin
Mike McKool
Lead Attorney
Texas State Bar No. 13732100
mmckool@mckoolsmith.com
Douglas Cawley
Texas State Bar No. 04035500
dcawley@mckoolsmith.com

MCKOOL SMITH, P.C.
300 Crescent Court, Suite 1500
Dallas, Texas 75201
Telephone: (214) 978-4000
Telecopier: (214) 978-4044
Sam F. Baxter
Texas State Bar No. 01938000
sbaxter@mckoolsmith.com
MCKOOL SMITH, P.C.
104 E. Houston St., Ste. 300
P.O. Box O
Marshall, Texas 75670
Telephone: (903) 923-9000
Telecopier: (903) 923-9095
Kevin L. Burgess
Texas State Bar No. 24006927
kburgess@mckoolsmith.com
Steven J. Pollinger
Texas State Bar No. 24011919
spollinger@mckoolsmith.com
Josh W. Budwin
Texas State Bar No. 24050347
jbudwin@mckoolsmith.com
Matt Rappaport
Texas State Bar No. 24070472
mrappaport@mckoolsmith.com
MCKOOL SMITH, P.C.
300 West Sixth Street, Suite 1700
Austin, Texas 78701
Telephone: (512) 692-8700
Telecopier: (512) 692-8744
**ATTORNEYS FOR PLAINTIFF
EOLAS TECHNOLOGIES, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on

counsel of record via email on September 17, 2010.

/s/ Josh Budwin

EXHIBIT A

Eolas' Preliminary Claim Construction and Preliminary Identification of Extrinsic Evidence for the '906 and '985 Patents

No.	Claim Term, Phrase, or Clause	Proposed By	Eolas' Preliminary Proposed Construction	Extrinsic Evidence
1.	"executable application"	Eolas/Defendants	"Executable application" means any computer program code, that is not the operating system or a utility, that is launched to enable an end-user to directly interact with data.	Prior construction of term in *Eolas Techs. v. Microsoft Corp.*, 2000 U.S. Dist. LEXIS 18886, at *56 (N.D. Ill. Dec. 28, 2000) *aff'd* by *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1336 (Fed. Cir. 2005)
2.	"utilized by [the / said] browser to identify and locate"	Eolas	"utilized by [the / said] browser to identify and locate" means the identify and locate functions are performed by the browser.	Prior construction of term in *Eolas Techs. v. Microsoft Corp.*, 2000 U.S. Dist. LEXIS 18886, at *56 (N.D. Ill. Dec. 28, 2000)
3.	"object"	Eolas/Defendants	"object" means text, images, sound files, video data, documents or other types of information that is presentable to a user of a computer system.	
4.	"utilized by said browser to identify and locate [an / said] executable application"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean utilized by [the / said] browser to identify and locate an executable application.[2]	
5.	"with the browser application: . . . utilizing the type information to identify and locate an executable	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean with the	

---

[2] A term that is underlined within a proposed construction has a separate definition, which is incorporated by reference.

No.	Claim Term, Phrase, or Clause	Proposed By	Eolas' Preliminary Proposed Construction	Extrinsic Evidence
	application"		browser application using the <u>type information</u> to identify and locate an <u>executable application</u>.	
6.	"cause the client workstation to utilize the browser to: … utilize the type information to identify and locate an executable application external to the file"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean cause the <u>client workstation</u> to use the browser to use the <u>type information</u> to identify and locate the <u>executable application</u> external to the file.	
7.	"utilized by the browser to identify and locate said executable application"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean <u>utilized by [the / said] browser to identify and locate</u> the <u>executable application</u>.	
8.	"with the browser application: … identifying and locating an executable application"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean with the browser application identifying and locating an <u>executable application</u>.	
9.	"executable application … is identified and located by the browser"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean <u>executable application</u> is identified and located by the browser.	
10.	"automatically [invoking / invoke] [the / said] executable application"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean automatically calling or activating the <u>executable application</u>.	Microsoft Press Computer Dictionary at 196 (c. 1991)
11.	"executable application is automatically invoked by the browser"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean <u>executable application</u> is automatically called or activated by the browser.	Microsoft Press Computer Dictionary at 196 (c. 1991)

No.	Claim Term, Phrase, or Clause	Proposed By	Eolas' Preliminary Proposed Construction	Extrinsic Evidence
12.	"workstation"	Defendants	a computer system connected to a network that serves the role of an information requester	
13.	"network server"	Defendants	a computer system that serves the role of an information provider	
14.	"type information"	Defendants	any information used by the browser to identify and locate the executable application, and may include the name of an application associated with the object	Prior construction of term in *Eolas Techs. v. Microsoft Corp.*, 2000 U.S. Dist. LEXIS 18886, at *56 (N.D. Ill. Dec. 28, 2000)
15.	"object [has / having] type information associated with it"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean the <u>object</u> has <u>type information</u> associated with it.	
16.	"enable interactive processing of said object"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean allow the <u>object</u> to be processed based on the user's interaction.	
17.	"[enable / enabling] an end-user to directly interact with [said / the / an] object"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean allowing a user to directly interact with the <u>object</u>.	
18.	"[first] hypermedia document"	Defendants	a document that allows a user to click on images, sound icons, video icons, etc., that link to other objects of various media types, such as additional graphics, sound video, text, or hypermedia or hypertext documents	
19.	"[first] distributed hypermedia document"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean <u>[first] hypermedia document</u> that allows a user to access a remote data object over a network.	
20.	"file"	Defendants	No construction of this term is needed.	Microsoft Press

No.	Claim Term, Phrase, or Clause	Proposed By	Eolas' Preliminary Proposed Construction	Extrinsic Evidence
			In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean a named collection of data.	Computer Dictionary at 144 (c. 1991) The New IEEE Standard Dictionary of Electrical and Electronics Terms at 498 (c. 1993)
21.	"file containing information to enable a browser application to display [, on] [said/the] [client workstation,] at least [a / said] portion of [a / said] distributed hypermedia document"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean the <u>file</u> contains information to allow the browser application to display at least part of a <u>distributed hypermedia document</u>.	
22.	"text format"	Defendants	No construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean text that initiates processing.	
23.	"embed text format"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean <u>text format</u> for embedding an <u>object</u>.	
24.	"embed text format, located at a first location in said first distributed hypermedia document"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean <u>embed text format</u> located at a first location in the <u>first distributed hypermedia document</u>.	
25.	"embed text format [which] correspond[s/ing] to [a / said] first location in the document"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean <u>embed text format</u> which relates to a first location in the document.	
26.	"interactively control[ling]"	Defendants	No construction of this term is needed. In the alternative, to the extent a	Microsoft Press Computer

No.	Claim Term, Phrase, or Clause	Proposed By	Eolas' Preliminary Proposed Construction	Extrinsic Evidence
			construction is deemed necessary, this term should be construed to mean controlling through back-and-forth interactions.	Dictionary at 192 (c. 1991)
27.	"distributed application"	Defendants	No construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean an application that may be broken up and performed among two or more computers.	
28.	"display [said / the] object"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean present the object to the user.	
29.	"object is being displayed"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean the object is being presented to the user.	
30.	"said executable application to execute on said client workstation in order to display said object and enable an end-user to directly interact with said object"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean the executable application to execute on the client workstation to display [said / the] object and [enable / enabling] an end-user to directly interact with [said / the / an] object.	
31.	"said executable application to execute on said client workstation in order to display said object and enable interactive processing of said object"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean the executable application to execute on the client workstation to display [said / the] object and enable interactive processing of said object.	
32.	"the executable application . . . to execute on the client workstation in order to display the object and enable an end-user to directly interact with the object"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean the executable application to execute on the client workstation to display [said / the] object and [enable / enabling] an end-user to directly interact with [said / the / an] object.	

No.	Claim Term, Phrase, or Clause	Proposed By	Eolas' Preliminary Proposed Construction	Extrinsic Evidence
33.	"directly interact with an object by utilizing said executable application to interactively process said object while the object is being displayed"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean directly interact with an <u>object</u> by using the <u>executable application</u> to process the <u>object</u> based on the user's interaction while the <u>object is being displayed</u>.	
34.	"the client workstation to display an object and enable an end-user to directly interact with said object while the object is being displayed"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean the <u>client workstation</u> to <u>display</u> [said / the] <u>object</u> and [enable / enabling] an end-user to <u>directly interact with</u> [said / the / an] <u>object</u> while the <u>object is being displayed</u>.	
35.	"an executable application . . . to enable an end-user to directly interact with an object while the object is being displayed"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean an <u>executable application</u> to [enable / enabling] an end-user to <u>directly interact with</u> [said / the / an] <u>object</u> while <u>object is being displayed</u>.	
36.	"the executable application . . . to enable an end-user to directly interact with the object[,] while the object is being displayed"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean the <u>executable application</u> to [enable / enabling] an end-user to <u>directly interact with</u> [said / the / an] <u>object</u>, while the <u>object is being displayed</u>.	
37.	"A computer program product . . . comprising a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising: computer readable program code for causing said client workstation to execute a browser	Defendants	No construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean that the computer program product that includes a computer usable medium having computer readable program code for causing the client workstation to execute a browser application.	

No.	Claim Term, Phrase, or Clause	Proposed By	Eolas' Preliminary Proposed Construction	Extrinsic Evidence
	application"			
38.	"computer readable media encoded with software"	Defendants	No construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean computer readable media having software.	
39.	"pars[e/es/ed/ing]"	Defendants	No construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean to break an input into smaller pieces.	Microsoft Press Computer Dictionary at 259 (c. 1991)
40.	"identify[ing] an embed text format"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean identifying an embed text format.	
41.	"an embed text format . . . is identified"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean an embed text format is identified.	
42.	"specifies the location of at least a portion of [an / said] object"	Defendants	No further construction of this term is needed. In the alternative, to the extent a construction is deemed necessary, this term should be construed to mean specifies the location of at least part of an object.	