# Exhibit 4

**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 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*. | ) ) ) ) | |
| 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 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.; Oracle America, Inc. f/k/a Sun Microsystems, Inc.; Texas Instruments Inc.; Yahoo! Inc.; and YouTube, LLC, | ) ) ) ) ) ) ) ) ) ) ) | |
| *Counterclaimants*, | ) ) | |
| vs. | ) ) | |
| Eolas Technologies Incorporated, | ) ) | |
| *Counterdefendant*. | ) ) ) | |

**JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**

In accordance with Patent Rule 4-3 and the Court's Docket Control Order, *see* Docket No. 249, the parties hereby submit their Joint Claim Construction and Prehearing Statement.  In accordance with Patent Rule 4-2(c), the parties met and conferred on October 7, 21, and 28 for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

## A.      Statement of the Parties

### 1.      Eolas' Statement

The parties dispute the construction of 21 claim terms, plus 54 additional terms defendants contend should be construed pursuant to § 112, ¶6.

Eolas proposed two of the twenty-one disputed terms for construction.  Eolas proposed no terms for construction pursuant to § 112, ¶6.

Defendants proposed twenty of the twenty-one disputed terms for construction. Defendants offer 17 different constructions for these 21 terms.  Defendants proposed all fifty-four terms for construction pursuant to § 112, ¶6.  These 54 additional terms are found in 31 claims of the patents-in-suit.  None of the 54 claim terms recite "means for."

During the meet and confer process, Eolas demonstrated to defendants that the claim terms they have put at issue arise in nearly all of the claims of the patents-in-suit.  A reduction in the number of asserted claims will not result in a material reduction of the number of claim construction disputes as defendants suggest.  Moreover, Eolas has granted the defendants several extensions of their document production deadlines and therefore, Eolas has not yet been afforded a chance to review the productions of the twenty-one defendants.  In light of this, the defendants' suggestion that Eolas reduce the number of claims at issue is premature.

### 2.      Defendants' Statement

The Defendants disagree with Eolas's statement.  As shown in Section C below, there are 15 groups of disputed terms for construction, and there is disagreement over whether § 112, ¶ 6 applies to 31 of the asserted claims.

The number of disputed issues is a result of two factors:  First, Eolas is asserting all 61 claims of the two patents-in-suit against 21 unrelated Defendants.  Second, different claim terms

are important to the different groups of Defendants.  The Defendants generally fall into three different groups based on their accused products: browsers (e.g., Google's Chrome browser, Apple's Safari browser); software (e.g., Adobe's Flash player, Oracle's Java software); and websites (e.g., Amazon.com, Yahoo.com, and most other defendants).

The Defendants have asked Eolas to reduce the number of asserted claims, but Eolas has refused, notwithstanding the Court's statement to Eolas on August 31, 2010, "I assume plaintiff [Eolas] will narrow those down [the number of asserted claims] before we get too much farther down the road."  Hr'g Tr. at 30:25–31:1 [Docket No. 413].

The Defendants have also asked Eolas to drop all infringement theories involving Microsoft products, but Eolas has refused, notwithstanding its prior settlement with Microsoft. As a result, Microsoft has filed a motion for a preliminary injunction against Eolas, which Judge Pallmeyer is scheduled to hear in Chicago on November 23, 2010.  The Defendants believe that Eolas should be able to reduce the number of asserted claims, accused products, and/or defendants by no later than the decision on Microsoft's motion for a preliminary injunction. Otherwise, as stated in Section F below, the Defendants may request a prehearing conference after November 23, 2010 — but well in advance of the claim construction hearing on March 3, 2011 — to ask for this Court's assistance.

### B.  Agreed-upon constructions

The chart below provides the construction of those claim terms, phrases, or clauses on which the parties agree:

| Claim Term(s) | Agreed-Upon Construction |
|---|---|
| type information . . . utilized by said browser to identify and locate [an / said] executable application | |
| with the browser application: … utilizing the type information to identify and locate an executable application | |
| utilize the browser to: … utilize the type information to identify and locate an executable application external to the file | the identify and locate functions are performed by the browser |
| type information is utilized by the browser to identify and locate said executable application | |
| with the browser application: … identifying and locating an executable application | |
| executable application … is identified and located by the browser | |
| | |
| enable interactive processing of said object | allow the object to be processed based on the user's interaction |
| [enable / enabling] an end-user to directly interact with [said / the / an] object | allowing a user to directly interact with the object |
| | |
| interactively control[ling] | controlling through back-and-forth interactions between a user and the controllable application |

### C.      Disputed Claim Constructions

The chart below provides each party's proposed construction of each disputed claim term, phrase, or clause, to the extent that § 112, ¶ 6 does <u>not</u> apply to the claim in which the phrase appears.  The parties dispute whether § 112, ¶ 6 applies to any claims.  Eolas contends that § 112, ¶ 6 does not apply to any claims.  Defendants contend that § 112, ¶ 6 applies to claims 6–10 and 13–14 of U.S. Patent No. 5,838,906 ("the '906 patent"), and claims 16–35 and 40–43 of U.S. Patent No. 7,599,985 ("the '985 patent").

Exhibit A provides Eolas' identification of intrinsic and extrinsic evidence supporting its proposed constructions, as required by P.R. 4-3(b), and Eolas' proposed corresponding structure(s)/act(s) to the extent that § 112, ¶ 6 is found to apply.

Exhibit B provides Defendants' identification of intrinsic and extrinsic evidence supporting their proposed constructions, as required by P.R. 4-3(b), and Defendants' proposed corresponding structure(s)/act(s) to the extent that § 112, ¶ 6 is found to apply.

| Claim Term(s) | Eolas' Proposal | Defendants' Proposal |
|---|---|---|
| automatically [invoking / invoke] [the / said] executable application | automatically calling or activating the <u>executable application</u>[1]. | in response to the browser parsing an embed text format, the executable application is launched to permit a user to interact with the object immediately, without any intervening activation of the object by the user |
| executable application is automatically invoked by the browser | <u>executable application</u> is automatically called or activated by the browser. | |
| | | |
| workstation | a computer system connected to a network that serves the role of an information requester | a desktop or deskside computer with an operating system and hardware designed for technical or scientific applications that provides higher performance than a personal computer |
| | | |
| network server | a computer system that serves the role of an information provider | a computer running software that is capable of executing applications responsive to requests from a client workstation, and that processes commands from a client workstation to locate and retrieve documents or files from storage |
| | | |
| executable application | 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. | a compiled native binary program, designed to help users perform certain tasks, that remains discrete and separate from the browser application, and is not the operating system, a utility, or a library |
| | | |

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[1] Underlining in the proposed construction indicates that the underlined word has been separately construed or separately proposed for construction.

| Claim Term(s) | Eolas' Proposal | Defendants' Proposal |
|---|---|---|
| object | text, images, sound files, video data, documents or other types of information that is presentable to a user of a computer system. | information capable of being retrieved and presented to a user of a computer system, which is not a program and which does not include source code or byte code |
| | | |
| type information | 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 | a value needed by the browser to determine which executable application to launch for a given object. The value can specify either a particular application <u>or</u> data type, or both |
| | | |
| file | a named collection of data. | a static document stored on a file system |
| | | |
| [first] hypermedia document | 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 | a document received by the browser that includes links (specified by the hypertext format) to graphics, sound, video or other media |
| [first] distributed hypermedia document | <u>[first] hypermedia document</u> that allows a user to access a remote data object over a network. | |
| 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 | the file contains information to allow the browser application to display at least part of a <u>distributed hypermedia document</u>. | |
| | | |
| text format | text that initiates processing. | a predefined set of tags or symbols that specify the formatting of a document |
| | | |

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| Claim Term(s) | Eolas' Proposal | Defendants' Proposal |
|---|---|---|
| embed text format | <u>text format</u> for embedding an <u>object</u>. | a tag that specifies the object to be embedded at the location of the tag |
| | | |
| embed text format, located at a first location in said first distributed hypermedia document | <u>embed text format</u> located at a first location in the <u>first distributed hypermedia document</u>. | embed text format located at the place in the received document where the embedded object will appear within the displayed document |
| embed text format [which] correspond[s/ing] to [a / said] first location in the document | <u>embed text format</u> which relates to a first location in the document. | embed text format located at the place in the received file where the embedded object will appear within the displayed document |
| | | |
| distributed application | an application that may be broken up and performed among two or more computers. | application external to the browser, where application tasks that could be performed on a single computer are instead broken up and performed at the same time on both the client workstation and one or more computers that are remote to the client workstation |
| | | |
| 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 application | 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. | a physical item that is commercially available and includes the computer code necessary to run a browser application on a client workstation |
| | | |
| computer readable media encoded with software | computer readable media having software. | a physical item that includes the computer code necessary to run a browser application on a client workstation |
| | | |

| Claim Term(s) | Eolas' Proposal | Defendants' Proposal |
|---|---|---|
| pars[e/es/ed/ing] | to break an input into smaller pieces. | decomposing a string of text using a grammar and categorizing its components |
| | | |
| identify[ing] an embed text format | identifying an <u>embed text format</u>. | detecting an embed text format during parsing of a hypermedia document |
| an embed text format . . . is identified | an <u>embed text format</u> is identified. | |
| | | |
| specifies the location of at least a portion of [an / said] object | specifies the location of at least part of an <u>object</u>. | specifies the location of at least a portion of [an / said] object<br><br>Where "specifies" has its common meaning: "to name or state explicitly or in detail." (See MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 9th Edition (1991)) |

**D.**      **Anticipated length of time for the Claim Construction Hearing**

The parties anticipate that the Claim Construction Hearing will require three hours.  The Court previously scheduled the Claim Construction Hearing for March 3, 2011, starting at 9:30 a.m.  *See* Docket No. 249.

**E.**      **Identification of witnesses**

No party proposes calling any witnesses, including experts, at the Claim Construction Hearing.

**F.**      **Other issues**

The Defendants may file a request for a prehearing conference after November 23, 2010, the date on which Judge Pallmeyer in Chicago is scheduled to hear Microsoft's motion for a preliminary injunction against Eolas.  *See Microsoft Corp. v. Eolas Techs. Inc.*, No. 1:10-cv-03820 (N.D. Ill. filed June 18, 2010).  The Defendants believe that the ruling by Judge Pallmeyer may provide an opportunity for the parties in this Court to narrow the scope of this case.

Eolas does not believe that such a hearing is necessary at this time.

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By: /s/ Mike McKool

    Mike McKool (Bar No. 13732100)
        <mmckool@mckoolsmith.com>
    Douglas Cawley (Bar No. 04035500)
        <dcawley@mckoolsmith.com>
    Luke McLeroy (Bar No. 24041455)
        <lmcleroy@mckoolsmith.com>
    McKOOL SMITH, P.C.
    300 Crescent Court, Suite 1500
    Dallas, TX 75201
    Telephone:    (214) 978-4000
    Facsimile:    (214) 978-4044

    Sam F. Baxter (Bar No. 01938000)
        <sbaxter@mckoolsmith.com>
    McKOOL SMITH, P.C.
    104 E. Houston St., Ste. 300
    P.O. Box O
    Marshall, TX 75670
    Telephone:    (903) 923-9000
    Facsimile:    (903) 923-9095

    Kevin L. Burgess (Bar No. 24006927)
        <kburgess@mckoolsmith.com>
    Steven J. Pollinger (Bar No. 24011919)
        <spollinger@mckoolsmith.com>
    Josh W. Budwin (Bar No. 24050347)
        <jbudwin@mckoolsmith.com>
    Matt Rappaport (Bar No. 24070472)
        <mrappaport@mckoolsmith.com>
    McKOOL SMITH, P.C.
    300 West Sixth Street, Suite 1700
    Austin, TX 78701
    Telephone:    (512) 692-8700
    Facsimile:    (512) 692-8744

*Attorneys for Plaintiff and*
*Counterdefendant Eolas Technologies, Inc.*

By: /s/ Jason W. Wolff

    David J. Healey
        <Healey@fr.com>
    FISH & RICHARDSON P.C.
    1 Houston Center
    1221 McKinney Street, Suite 2800
    Houston, TX 77010
    Telephone:    (713) 654-5300
    Facsimile:    (713) 652-0109

    OF COUNSEL:

    Frank E. Scherkenbach
        <Scherkenbach@fr.com>
    FISH & RICHARDSON P.C.
    One Marina Park Drive
    Boston, MA 02110-1878
    Telephone:    (617) 542-5070
    Facsimile:    (617) 542-8906

    Jason W. Wolff
        <Wolff@fr.com>
    Joseph P. Reid *(pro hac vice)*
        <Reid@fr.com>
    FISH & RICHARDSON P.C.
    12390 EI Camino Real
    San Diego, CA 92130
    Telephone:    (858) 678-5070
    Facsimile:    (858) 678-5099

*Attorneys for Defendant and*
*Counterclaimant Adobe Systems Inc.*

By:   /s/ Joseph H. Lee

Douglas Lumish (*pro hac vice*)
  <doug.lumish@weil.com>
Jared Bobrow (*pro hac vice*)
  <jared.bobrow@weil.com>
Joseph H. Lee *(pro hac vice)*
  <joseph.lee@weil.com>
Parker C. Ankrum *(pro hac vice)*
  <parker.ankrum@weil.com>
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA  94065
Telephone:    (650) 802-3000
Facsimile:    (650) 802-3100

Christian J. Hurt (Bar No. 24059987)
  <christian.hurt@weil.com>
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1600
Houston, TX  77002
Telephone:    (713) 546-5000
Facsimile:    (713) 224-9511

Otis W. Carroll, Jr. (Bar No. 03895700)
  <fedserv@icklaw.com>
Deborah J. Race (Bar No. 16448700)
  <drace@icklaw.com>
IRELAND CARROLL & KELLEY
6101 S. Broadway, Suite 500
Tyler, TX  75703
Telephone:    (903) 561-1600
Facsimile:    (903) 581-1071

*Attorneys for Defendant and
Counterclaimant Amazon.com, Inc.*

By:   /s/ Richard A. Cederoth

David T. Pritikin (*pro hac vice*)
    <dpritikin@sidley.com>
Richard A. Cederoth (*pro hac vice*)
    <rcederoth@sidley.com>
Shubham Mukherjee (*pro hac vice*)
    <smukherjee@sidley.com>
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL  60603
Telephone:   (312) 853-7000
Facsimile:   (312) 853-7036

Teague I. Donahey (*pro hac vice*)
    <tdonahey@sidley.com>
SIDLEY AUSTIN LLP
555 California Street, Suite 2000
San Francisco, CA  94104
Telephone:   (415) 772-1200
Facsimile:   (415) 772-7400

Theodore W. Chandler (*pro hac vice*)
    <tchandler@sidley.com>
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA  90013
Telephone:   (213) 896-6000
Facsimile:   (213) 896-6600

Duy D. Nguyen (*pro hac vice*)
    <ddnguyen@sidley.com>
SIDLEY AUSTIN LLP
1801 Page Mill Road, Suite 110
Palo Alto, CA  94304
Telephone:   (650) 565-7000
Facsimile:   (650) 565-7100

Eric M. Albritton (Bar No. 00790215)
    <ema@emafirm.com>
ALBRITTON LAW FIRM
P.O. Box 2649
Longview, TX  75606
Telephone:   (903) 757-8449
Facsimile:   (903) 758-7397

*Attorneys for Defendant and
Counterclaimant Apple Inc.*

By:   /s/ Thomas L. Duston

Thomas L. Duston
  <tduston@marshallip.com>
Anthony S. Gabrielson
  <agabrielson@marshallip.com>
Scott A. Sanderson *(pro hac vice)*
  <ssanderson@marshallip.com>
MARSHALL, GERSTEIN & BORUN LLP
6300 Willis Tower
233 South Wacker Drive
Chicago, IL  60606-6357
Telephone:  (312) 474-6300
Facsimile:   (312) 474-0448

Eric H. Findlay (Bar No. 00789886)
  <efindlay@findlaycraft.com>
Brian Craft (Bar No. 04972020)
  <bcraft@findlaycraft.com>
FINDLAY CRAFT, LLP
6760 Old Jacksonville Highway
Suite 101
Tyler, TX  75703
Telephone:    (903) 534-1100
Facsimile:     (903) 534-1137

*Attorneys for Defendant and*
*Counterclaimant CDW LLC*

By:  /s/ M. Scott Fuller
_____

Edwin R. DeYoung (Bar No. 05673000)
  <edeyoung@lockelord.com>
Roy W. Hardin (Bar No. 08968300)
  <rhardin@lockelord.com>
Roger Brian Cowie (Bar No. 00783886)
  <rcowie@lockelord.com>
M. Scott Fuller (Bar No. 24036607)
  <sfuller@lockelord.com>
Galyn Gafford (Bar No. 24040938)
  <ggafford@lockelord.com>
LOCKE LORD BISSELL & LIDDELL LLP
2200 Ross Avenue, Suite 2200
Dallas, TX  75201-6776
Telephone:    (214) 740-8000
Facsimile:    (214) 740-8800

Alexas D. Skucas (*pro hac vice*)
  <askucas@kslaw.com>
KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY  10036-4003
Telephone:    (212) 556-2100
Facsimile:    (212) 556-2222

Eric L. Sophir (*pro hac vice*)
  <esophir@kslaw.com>
KING & SPALDING LLP
1700 Pennsylvania Ave. NW, Suite 200
Washington, D.C.  20006-4707
Telephone:    (202) 626-8980
Facsimile:    (202) 626-3737

*Attorneys for Defendant Citigroup Inc.*

By:  /s/ Joseph H. Lee

Douglas Lumish (*pro hac vice*)
   <doug.lumish@weil.com>
Jared Bobrow (*pro hac vice*)
   <jared.bobrow@weil.com>
Joseph H. Lee *(pro hac vice)*
   <joseph.lee@weil.com>
Parker C. Ankrum *(pro hac vice)*
   <parker.ankrum@weil.com>
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA  94065
Telephone:   (650) 802-3000
Facsimile:   (650) 802-3100

Christian J. Hurt (Bar No. 24059987)
   <christian.hurt@weil.com>
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1600
Houston, TX  77002
Telephone:   (713) 546-5000
Facsimile:   (713) 224-9511

Otis W. Carroll, Jr. (Bar No. 03895700)
   <fedserv@icklaw.com>
Deborah J. Race (Bar No. 16448700)
   <drace@icklaw.com>
IRELAND CARROLL & KELLEY
6101 S. Broadway, Suite 500
Tyler, TX  75703
Telephone:   (903) 561-1600
Facsimile:   (903) 581-1071

*Attorneys for Defendant and
Counterclaimant eBay Inc.*

By:   /s/ Jeffrey F. Yee

Jeffrey K. Joyner (*pro hac vice*)
   <joynerj@gtlaw.com>
Jeffrey F. Yee (*pro hac vice*)
   <yeej@gtlaw.com>
GREENBERG TRAURIG LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, CA  90404
Telephone:    (310) 586-7700
Facsimile:    (310) 586-7800

Christopher M. Joe (Bar No. 00787770)
   <chrisjoe@bjciplaw.com>
Brian Carpenter (Bar No. 03840600)
   <brian.carpenterb@bjciplaw.com>
Eric W. Buether (Bar No. 03316880)
   <eric.buethere@bjciplaw.com>
BUETHER JOE & CARPENTER, LLP
1700 Pacific, Suite 2390
Dallas, TX  75201
Telephone:    (214) 466-1270
Facsimile:    (214) 635-1842

*Attorneys for Defendant and*
*Counterclaimant Frito-Lay, Inc.*

By:  /s/ Neil J. McNabnay

Thomas M. Melsheimer (Bar No. 13922550)
   <txm@fr.com>
Neil J. McNabnay (Bar No. 24002583)
   <njm@fr.com>
FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, TX  75201
Telephone:    (214) 747-5070
Facsimile:     (214) 747-2091

Proshanto Mukherji (*pro hac vice*)
   <pvm@fr.com>
FISH & RICHARDSON P.C.
One Marina Park Drive
Boston, MA  02110-1878
Telephone:    (617) 542-5070
Facsimile:     (617) 542-8906

*Attorneys for Defendant and Counterclaimant The Go Daddy Group, Inc.*

By: /s/ Scott T. Weingaertner

Scott T. Weingaertner *(pro hac vice)*
  <sweingaertner@kslaw.com>
Robert F. Perry *(pro hac vice)*
  <rperry@kslaw.com>
Allison Altersohn *(pro hac vice)*
  <aaltersohn@kslaw.com>
Christopher C. Carnaval *(pro hac vice)*
  <ccarnaval@kslaw.com>
Mark H. Francis *(pro hac vice)*
  <mfrancis@kslaw.com>
KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY  10036-4003
Telephone:    (212) 556-2100
Facsimile:    (212) 556-2222


Michael E. Jones (Bar No. 10929400)
  <mikejones@potterminton.com>
Allen F. Gardner (Bar No. 24043679)
  <allengardner@potterminton.com>
POTTER MINTON
A Professional Corporation
110 N. College, Suite 500 (75702)
P.O. Box 359
Tyler, TX  75710
Telephone:    (903) 597-8311
Facsimile:    (903) 593-0846

*Attorneys for Defendant and*
*Counterclaimant Google Inc.*

By:  /s/ Jeffrey F. Yee

Jeffrey K. Joyner (*pro hac vice*)
  <joynerj@gtlaw.com>
Jeffrey F. Yee (*pro hac vice*)
  <yeej@gtlaw.com>
GREENBERG TRAURIG LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, CA  90404
Telephone:    (310) 586-7700
Facsimile:    (310) 586-7800

Christopher M. Joe (Bar No. 00787770)
  <chrisjoe@bjciplaw.com>
Brian Carpenter (Bar No. 03840600)
  <brian.carpenterb@bjciplaw.com>
Eric W. Buether (Bar No. 03316880)
  <eric.buethere@bjciplaw.com>
BUETHER JOE & CARPENTER, LLP
1700 Pacific, Suite 2390
Dallas, TX  75201
Telephone:    (214) 466-1270
Facsimile:    (214) 635-1842

*Attorneys for Defendant and
Counterclaimant J.C. Penney Company,
Inc.*

-17-

By:  /s/ Stephen K. Shahida

Stephen K. Shahida (*pro hac vice*)
   <sshahida@mwe.com>
David O. Crump (*pro hac vice*)
   <dcrump@mwe.com>
MCDERMOTT WILL & EMERY LLP
600 13th Street, N.W.
Washington, DC  20005-3096
Telephone:    (202) 756-8327
Facsimile:    (202) 756-8087

Trey Yarbrough (Bar No. 22133500)
   <trey@yw-lawfirm.com>
Debra Elaine Gunter (Bar No. 24012752)
   <debby@yw-lawfirm.com>
YARBROUGH WILCOX, PLLC
100 E. Ferguson Street
Suite 1015
Tyler, TX  75702
Telephone:    (903) 595-3111
Facsimile:    (903) 595-0191

*Attorneys for Defendant and
Counterclaimant JPMorgan Chase & Co.*

By:  /s/ Michael Simons

Michael Simons (Bar No. 24008042)
   <msimons@akingump.com>
AKIN GUMP STRAUSS HAUER & FELD LLP
300 West 6th Street, Suite 2100
Austin, TX  78701
Telephone:    (512) 499-6253
Facsimile:    (512) 499-6290

*Attorney for Defendant and
Counterclaimant New Frontier Media, Inc.*

By:   /s/ Suzanne M. Wallman

Kenneth J. Jurek
    <kjurek@mwe.com>
Suzanne M. Wallman
    <swallman@mwe.com>
Brett E. Bachtell
    <bbachtell@mwe.com>
MCDERMOTT WILL & EMERY LLP
227 West Monroe Street
Chicago, IL  60606
Telephone:    (312) 372-2000
Facsimile:    (312) 984-7700

David M. Stein (Bar No. 00797494)
    <dstein@mwe.com>
MCDERMOTT WILL & EMERY LLP
18191 Von Karman Avenue, Suite 500
Irvine, CA  92612-7108
Telephone:    (949) 851-0633
Facsimile:    (949) 851-9348

J. Thad Heartfield (Bar No. 09346800)
    <thad@jth-law.com>
THE HEARTFIELD LAW FIRM
2195 Dowlen Road
Beaumont, TX  77706
Telephone:    (409) 866-3318
Facsimile:    (409) 866-5789

*Attorneys for Defendant and
Counterclaimant Office Depot, Inc.*

By:   /s/ Scott F. Partridge

Scott F. Partridge (Bar No. 00786940)
  <scott.partridge@bakerbotts.com>
Roger J. Fulghum (Bar No. 00790724)
  <roger.fulghum@bakerbotts.com>
BAKER BOTTS L.L.P.
One Shell Plaza
910 Louisiana
Houston, TX  77002-4995
Telephone:     (713) 229-1234
Facsimile:     (713) 229-1522

Kevin J. Meek (Bar No. 13899600)
  <kevin.meek@bakerbotts.com>
Paula D. Heyman (Bar No. 24027075)
  <paula.heyman@bakerbotts.com>
BAKER BOTTS L.L.P.
1500 San Jacinto Center
Austin, TX  78701-4075
Telephone:     (512) 322-2500
Facsimile:     (512) 322-2501

Vernon E. Evans (Bar No. 24069688)
  <vernon.evans@bakerbotts.com>
BAKER BOTTS L.L.P.
2001 Ross Avenue
Dallas, TX  75201-2980
Telephone:     (214) 953-6500
Facsimile:     (214) 953-6503

Shannon Dacus (Bar No. 00791004)
  <Shannond@rameyflock.com>
RAMEY & FLOCK, P.C.
100 East Ferguson, Suite 500
Tyler, TX  75702
Telephone:     (903) 597-3301
Facsimile:     (903) 597-2413


*Attorneys for Defendant and
Counterclaimant Perot Systems Corp.*

By:   /s/ Gentry C. McLean

David B. Weaver (Bar No. 00798576)
    <dweaver@velaw.com>
Avelyn M. Ross (Bar No. 24027871)
    <aross@velaw.com>
Gentry C. McLean (Bar No. 24046403)
    <gmclean@velaw.com>
John A. Fedock (Bar No. 24059737)
    <jfedock@velaw.com>
VINSON & ELKINS LLP
2801 Via Fortuna, Suite 100
Austin, TX  78746-7568
Tel: (512) 542-8400
Fax: (512) 236-3218

*Attorneys for Defendant and
Counterclaimant Playboy Enterprises
International, Inc.*


By:   /s/ Jeffrey F. Yee

Jeffrey K. Joyner (*pro hac vice*)
    <joynerj@gtlaw.com>
Jeffrey F. Yee (*pro hac vice*)
    <yeej@gtlaw.com>
GREENBERG TRAURIG LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, CA  90404
Telephone:    (310) 586-7700
Facsimile:    (310) 586-7800

Christopher M. Joe (Bar No. 00787770)
    <chrisjoe@bjciplaw.com>
Brian Carpenter (Bar No. 03840600)
    <brian.carpenterb@bjciplaw.com>
Eric W. Buether (Bar No. 03316880)
    <eric.buethere@bjciplaw.com>
BUETHER JOE & CARPENTER, LLP
1700 Pacific, Suite 2390
Dallas, TX  75201
Telephone:    (214) 466-1270
Facsimile:    (214) 635-1842

*Attorneys for Defendant and
Counterclaimant Rent-A-Center, Inc.*

By:   /s/ Daniel V. Williams

Mark G. Matuschak (*pro hac vice)*
  <mark.matuschak@wilmerhale.com>
Donald R. Steinberg (*pro hac vice)*
  <donald.steinberg@wilmerhale.com>
WILMER CUTLER PICKERING HALE AND
DORR LLP
60 State Street
Boston, MA  02109
Telephone:   (617) 526-6000
Facsimile:   (617) 526-5000

Kate Hutchins (*pro hac vice)*
  <kate.hutchins@wilmerhale.com>
WILMER CUTLER PICKERING HALE AND
DORR LLP
399 Park Avenue
New York, NY  10011
Telephone:   (212) 230-8800
Facsimile:   (212) 230-8888

Daniel V. Williams, (*pro hac vice)*
  <daniel.williams@wilmerhale.com>
WILMER CUTLER PICKERING HALE AND
DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC  20006
Telephone:   (202) 663-6000
Facsimile:   (202) 663-6363

Michael E. Richardson (Bar No. 24002838)
  <mrichardson@brsfirm.com>
BECK REDDEN & SECREST
1221 McKinney, Suite 4500
Houston, TX  77010
Telephone:   (713) 951-6284
Facsimile:   (713) 951-3720

*Attorneys for Defendant and
Counterclaimant Staples, Inc.*

By:  /s/ Kathryn B. Riley

Mark D. Fowler *(pro hac vice)*
   <<mark.fowler@dlapiper.com>>
DLA PIPER US LLP
2000 University Avenue
East Palo Alto, CA  94303-2215
Telephone:   (650) 833-2000
Facsimile:   (650) 833-2001

Kathryn B. Riley (*pro hac vice*)
   <<kathryn.riley@dlapiper.com>>
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA  92101
Telephone:   (619) 699-2700
Facsimile:   (619) 764-6692

Eric H. Findlay (Bar No. 00789886)
   <<efindlay@findlaycraft.com>>
FINDLAY CRAFT, LLP
6760 Old Jacksonville Highway
Suite 101
Tyler, TX  75703
Telephone:   (903) 534-1100
Facsimile:   (903) 534-1137

*Attorneys for Defendant and
Counterclaimant Oracle America, Inc.
(formerly known as Sun Microsystems,
Inc.)*

By:   /s/ Amanda A. Abraham

Carl R. Roth (Bar No. 17312000)
  <cr@rothfirm.com>
Brendan C. Roth (Bar No. 24040132)
  <br@rothfirm.com>
Amanda A. Abraham (Bar No. 24055077)
  <aa@rothfirm.com>
THE ROTH LAW FIRM, P.C.
115 N. Wellington, Suite 200
Marshall, TX  75670
Telephone:    (903) 935-1665
Facsimile:    (903) 935-1797

*Attorneys for Defendant  and
Counterclaimant Texas Instruments
Incorporated*

By:  /s/ Joseph H. Lee

Douglas Lumish (*pro hac vice*)
  &lt;doug.lumish@weil.com&gt;
Jared Bobrow (*pro hac vice*)
  &lt;jared.bobrow@weil.com&gt;
Joseph H. Lee *(pro hac vice)*
  &lt;joseph.lee@weil.com&gt;
Parker C. Ankrum *(pro hac vice)*
  &lt;parker.ankrum@weil.com&gt;
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA  94065
Telephone:   (650) 802-3000
Facsimile:    (650) 802-3100

Christian J. Hurt (Bar No. 24059987)
  &lt;christian.hurt@weil.com&gt;
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1600
Houston, TX  77002
Telephone:   (713) 546-5000
Facsimile:    (713) 224-9511

Otis W. Carroll, Jr. (Bar No. 03895700)
  &lt;fedserv@icklaw.com&gt;
Deborah J. Race (Bar No. 16448700)
  &lt;drace@icklaw.com&gt;
IRELAND CARROLL & KELLEY
6101 S. Broadway, Suite 500
Tyler, TX  75703
Telephone:   (903) 561-1600
Facsimile:    (903) 581-1071

*Attorneys for Defendant  and
Counterclaimant Yahoo! Inc.*

By:  /s/ Scott T. Weingaertner

Scott T. Weingaertner *(pro hac vice)*
  <sweingaertner@kslaw.com>
Robert F. Perry *(pro hac vice)*
  <rperry@kslaw.com>
Allison Altersohn *(pro hac vice)*
  <aaltersohn@kslaw.com>
Christopher C. Carnaval *(pro hac vice)*
  <ccarnaval@kslaw.com>
Mark H. Francis *(pro hac vice)*
  <mfrancis@kslaw.com>
KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY  10036-4003
Telephone:    (212) 556-2100
Facsimile:     (212) 556-2222


Michael E. Jones (Bar No. 10929400)
  <mikejones@potterminton.com>
Allen F. Gardner (Bar No. 24043679)
  <allengardner@potterminton.com>
POTTER MINTON
A Professional Corporation
110 N. College, Suite 500 (75702)
P.O. Box 359
Tyler, TX  75710
Telephone:    (903) 597-8311
Facsimile:     (903) 593-0846

*Attorneys for Defendant and
Counterclaimant YouTube, LLC*

## **SIGNATURE ATTESTATION**

I hereby certify that concurrence in the service of this document has been obtained from each of the other signatories shown above.

                /s/ Shubham Mukherjee
Shubham Mukherjee, Attorney for one of the
Defendants

## <u>CERTIFICATE OF SERVICE</u>

I hereby certify 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 October 29, 2010.


<u>            /s/ Duy D. Nguyen            </u>
Duy D. Nguyen, Attorney for one of the Defendants

# EXHIBIT A

**Eolas' Proposed Claim Constructions and Identification of**
**Intrinsic and Extrinsic Evidence for the '906 and '985 Patents**

| No. | Claim Term, Phrase, or Clause | Eolas' Proposed Construction | Extrinsic Evidence | Intrinsic Evidence (cites are to '985 specification)[1] |
|---|---|---|---|---|
| 1. | "automatically [invoking / invoke] [the / said] executable application" | 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:<br><br>automatically calling or activating the <u>executable application</u>. | Microsoft Press Computer Dictionary at 196, "invoke" (c. 1991) | 3:38-42 |
| 2. | "executable application is automatically invoked by the browser" | 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:<br><br><u>executable application</u> is automatically called or activated by the browser. | Microsoft Press Computer Dictionary at 196, "invoke" (c. 1991) | 3:38-42 |
| 3. | "workstation" | 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:<br><br>a computer system connected to a network that serves the role of an information requester | | Fig 2; Fig 3; Fig 4; 1:30-37; 4-17-52; 6:8-15; 6:39-53 |
| 4. | "network server" | 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:<br><br>a computer system that serves the role of an information provider | | Fig 2; Fig 3; Fig 4; 4:25-52; 6:39-50 |
| 5. | "executable application" | 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 | Fig. 5; Fig. 9; 6:41-50; 6:53-59; 8:49-64; 9:13-36; 9:41-43; 9:48-51; 9:59-64; 10:66-11:4; 12:51-13:16; 13:22-26 |

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[1] U.S. Patent No. 7,599,985 is a continuation of U.S. Patent No. 5,838,906.  The specifications of the two patents are nearly identical.

| No. | Claim Term, Phrase, or Clause | Eolas' Proposed Construction | Extrinsic Evidence | Intrinsic Evidence (cites are to '985 specification)[1] |
|---|---|---|---|---|
| | | | 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) | |
| 6. | "object" | text, images, sound files, video data, documents or other types of information that is presentable to a user of a computer system | | Fig. 1; Fig. 5; 1:59-2:1; 2:12-44; 2:53-59; 3:23-25; 3:31-45; 4:53-56; 5:7-16; 5:31-42; 6:16-35; 6:39-41; 9:32-36 |
| 7. | "type information" | 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:<br><br>any information used by the browser to identify and locate the executable application, and may include the name of an application associated with the <u>object</u> | Prior construction of term in *Eolas Techs. v. Microsoft Corp.,* 2000 U.S. Dist. LEXIS 18886, at *56 (N.D. Ill. Dec. 28, 2000) | 12:60-13:31 |
| 8. | "file" | 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:<br><br>a named collection of data. | Microsoft Press Computer Dictionary at 144, "file" (c. 1991)<br><br>The New IEEE Standard Dictionary of Electrical and | |

| No. | Claim Term, Phrase, or Clause | Eolas' Proposed Construction | Extrinsic Evidence | Intrinsic Evidence (cites are to '985 specification)[1] |
|---|---|---|---|---|
| | | | Electronics Terms at 498, "file" (c. 1993) | |
| 9. | "[first] hypermedia document" | 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:<br><br>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 | | Fig. 1; 1:59-2:34 |
| 10. | "[first] distributed hypermedia document" | 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:<br><br>[first] hypermedia document that allows a user to access a remote data object over a network. | | Fig. 1; 1:59-2:34; 5:24-40 |
| 11. | "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" | 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:<br><br>the file contains information to allow the browser application to display at least part of a distributed hypermedia document. | | Fig. 1; 1:59-2:34; 5:24-40 |
| 12. | "text format" | 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:<br><br>text that initiates processing. | | 17:6-24:9 |
| 13. | "embed text format" | 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:<br><br>text format for embedding an object. | | 12:55-13:19 |
| 14. | "embed text format, located at a first location in said first distributed hypermedia | 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: | | Fig. 1; 1:59-2:34; 5:24-40; 12:55-13:19 |

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| No. | Claim Term, Phrase, or Clause | Eolas' Proposed Construction | Extrinsic Evidence | Intrinsic Evidence (cites are to '985 specification)[1] |
|---|---|---|---|---|
| | document" | embed text format located at a first location in the first distributed hypermedia document. | | |
| 15. | "embed text format [which] correspond[s/ing] to [a / said] first location in the document" | 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:<br><br>embed text format which relates to a first place in the document. | | 12:55-13:19 |
| 16. | "distributed application" | 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:<br><br>an application that may be broken up and performed among two or more computers. | | Fig. 6; 10:63-11:10. |
| 17. | "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 application" | 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:<br><br>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. | | 2:67-3:3;  8:49-53;  8:65-67; 9:7-9; 9:14-17 |
| 18. | "computer readable media encoded with software" | 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:<br><br>computer readable media having software. | | 2:67-3:3;  8:49-53;  8:65-67; 9:7-9; 9:14-17 |
| 19. | "pars[e/es/ed/ing]" | 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:<br><br>to break an input into smaller pieces. | Microsoft Press Computer Dictionary at 259, "parse" (c. 1991) | Fig. 7A; Fig 7B; Fig 8A; Fig 8B; 9:7-11 |

| No. | Claim Term, Phrase, or Clause | Eolas' Proposed Construction | Extrinsic Evidence | Intrinsic Evidence (cites are to '985 specification)[1] |
|---|---|---|---|---|
| 20. | "identify[ing] an embed text format" | 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:<br><br>identifying an <u>embed text format</u>. | | 12:55-13:19 |
| 21. | "an embed text format . . . is identified" | 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:<br><br>an <u>embed text format</u> is identified. | | 12:55-13:19 |
| 22. | "specifies the location of at least a portion of [an / said] object" | 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:<br><br>specifies the location of at least part of an <u>object</u>. | | Fig. 1; Fig. 5; 1:59-2:1; 2:12-44;  2:53-59;  3:23-25;  3:31-45; 4:53-56; 5:7-16;<br> 5:31-42;  6:16-35;  6:39-41;  9:32-36 |