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

EOLAS TECHNOLOGIES, INC.

Plaintiff,

v.

ADOBE SYSTEMS, INC., ET AL.,

Defendants.

Civil Action No. 6:09-CV-446 LED

JURY TRIAL DEMANDED

DEFENDANTS' RESPONSE TO COURT'S PROPOSED LANGUAGE FOR "TEXT FORMAT" AND "DISTRIBUTED APPLICATION"

At the hearing the Court requested the parties submit a statement with any objections to the Court's proposed constructions of the term "text format" and "distributed application." This submission responds to the proposed constructions.

"Text Formats"

Defendants' Proposed Construction	***Court's Proposed Construction***	***Defendants' Response to Court's Proposal***
tags or symbols that specify document formatting	coded information that describes how the content of a hypermedia document is to be interpreted by a browser application for display	coded information that describes how the content of a hypermedia document is to be ~~interpreted~~ displayed by a browser application ~~for display~~

While Defendants believe their proposed construction is correct and easy for a jury to understand, they also believe that the Court's proposed construction, as modified above, appears to address two issues of concern for Defendants. However, it is important to recognize that the Court's proposed construction for "text formats" — even as modified above by Defendants — does not resolve the dispute between the parties about the proper construction for "embed text

format . . . first location," which appears to be the primary dispute between the parties. These issues are discussed below.

First, the Court's proposed construction for "text formats," as modified above, resolves what a "text format" is: *i.e.* coded information (which would include tags or symbols). In so far as the Court's construction covers tags or symbols — but is not so broad as to include programs or scripts, which were distinguished during prosecution — this concern is addressed. Defendants in this regard refer the Court to their briefing on the "embed text format" related limitations (D.I. 569 at 11-14 and Ex. J, D.I. 569-4, at 62–63, 67), as well as slide 38 of their Markman presentation.

Second, the Court's proposed construction for "text formats" addresses how "text format" relates to content of the hypermedia document received by the browser. At the hearing, counsel for one Defendant, Adobe, suggested that the Court's term "interpreted" might be framed as "used." The proposed modification above simplifies that suggestion and has the consent of all Defendants. The word "interpreted" in the Court's proposal is already a source of disagreement between the parties. Also, the word "interpreted" is not consistent with what is fairly disclosed in the specification or the intrinsic record.

Also at the hearing, Plaintiff's counsel suggested that the word "coded" be removed from the Court's proposal. Defendants cannot agree to this, because the term "information" alone is too vague to provide meaningful assistance to the jury. It is unclear what a "text format" is if it is just "information." Moreover, the term "information" alone is not supported by the specification or the intrinsic record. In this regard, the patents describe a browser application that parses the received hypermedia document for tags or symbols that can be distinguished from the other information contained in the hypermedia document, such as textual information. '906

patent, 14:12-39 and Fig. 7A. When the browser encounters a tag or symbol, it knows to process that encoded information as a tag or symbol dictating the manner in which certain other information is displayed by the browser, rather than displaying the encoded information itself. (D.I. 569, at Ex. J, D.I. 569-4, at 67.) Conversely, when the browser encounters information that is not encoded as a tag or symbol, the browser will generally display that information itself, and will do so in the manner specified by any associated tags or symbols. (*Id*.) The Court's proposed language — "coded information" — conveys this distinction.

However, it is important to recognize that the Court's proposed construction for "text formats" — even as modified above by Defendants — does not resolve the dispute between the parties about the proper construction for "embed text format . . . first location," which appears to be the primary dispute between the parties. For example, Defendants' position is that if the "location" of the "embed text format" is at the top of the HTML file received from the network server, then the interactive object must be displayed at the top of the hypermedia document. Conversely, if the "embed text format" is located at the bottom of the HTML file, then the interactive object must be displayed at the bottom of the hypermedia document. (*See* D.I. 569, at 12–14.) Eolas, on the other hand, wants to argue that even if the alleged "embed text format" is located at the top of the HTML file, the interactive object could still be displayed at the bottom of the hypermedia documents. The Court's proposed construction for "text formats" does not resolve this dispute. Defendants' proposed construction for "embed text format . . . first location," by way of contrast, is consistent with the Court's proposed construction for "text formats" and resolves the dispute between the parties about "embed text format . . . first location."

"Distributed Application"

Defendants' proposed construction	*Eolas's proposed construction*
an application in which tasks are broken up and performed in parallel on two or more computers	an application that may be broken up and performed among two or more computers

The Court also suggested that Defendants' proposed construction of "distributed application" could be modified with the addition of "capable of." Defendants cannot agree to this proposal because it is no limitation at all. Each of the claims containing the term "distributed application" (claims 36, 40, and 44 of the '985 patent) is undisputedly a method claim and the plain language requires the steps using the distributed application to be performed. Mere potential distribution of the application is not enough and would eliminate the patent's belabored distinction between a "distributed application" and an "application" and, moreover, invite disputes about what it means to be "capable of."

Regardless of how the Court resolves the above issue, the proper construction requires that broken-up tasks must be performed in parallel. As discussed in Defendants' presentation and brief, parallel processing is a key defining characteristic of the claims in question — the patent states that parallel processing enables processing "fast enough" to perform tasks "in real time." Processing the different portions of the tasks serially would not reduce overall processing time, and thus would not address one of the core problems to which the patent is directed — speeding up processing of time-consuming tasks. The lack of a parallel processing requirement would eviscerate the distinction between the special distributed applications shown in Figure 6 and the non-distributed applications more generally described with respect to the other claims and embodiments of the patent such as Figure 5, which shows a traditional client/server arrangement. *See* '985 patent at 10:53–11:16 & Figs. 5–6 (reprinted below). Thus even if Eolas's proposed construction were changed to "an application that is broken up and performed

among two or more computers," that construction would not be correct because it could encompass a traditional client/server arrangement as shown in Figure 5, which the patent teaches is not a distributed application. Accordingly, Defendants maintain their request that the Court construe "distributed application" to mean "an application in which tasks are broken up and performed in parallel on two or more computers."

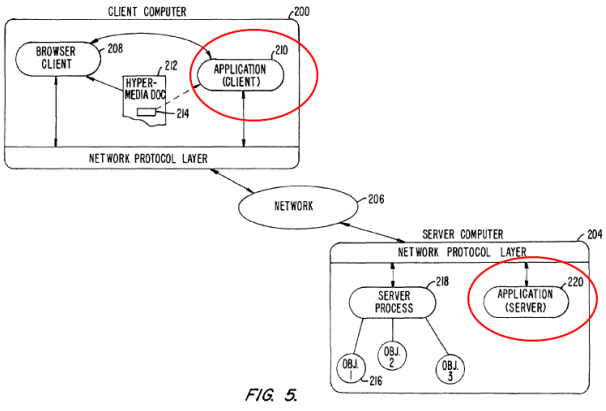

Fig. 5: Client/server — not distributed

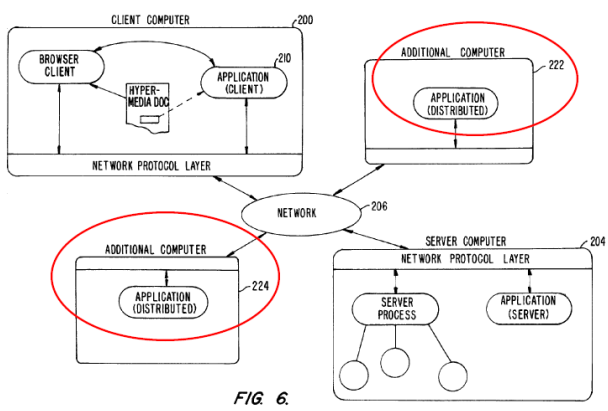

Fig. 6: Is distributed

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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