

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

OPPOSED MOTION FOR LEAVE TO FILE A

SUMMARY JUDGMENT MOTION UNIQUE TO ADOBE

Adobe, Inc., moves for leave to file a motion for summary judgment on the contractual and exhaustion effects of the Oracle Settlement Agreement and License. Two Adobe websites—including www.adobe.com, which forms the entire royalty basis for the majority of Eolas's damages theory—are hosted on Sun network servers. Sun network servers are now licensed hardware products under the Oracle Settlement and License Agreement. Alternatively, even if the hardware's operation is somehow outside of the express terms of the Oracle contract, the Eolas patents are exhausted by Sun's licensed sale of hardware. The Motion and Brief, exclusive of exhibits, is approximately 11 pages. Adobe's motion is unique to Adobe's circumstances and is not a motion that should be charged against all Defendants in counting pages for summary judgment.

Adobe files this motion aware of the Court's admonition on page limits, and in doing so has kept its motion as short as possible. Adobe is also aware of and has cooperated in the Court's

requirement that Adobe and all Defendants work together: In fairness to other Defendants, Adobe did not think it appropriate to unilaterally file its own unique summary judgment motion if it would be charged against a collective page limit.¹ These are questions of law, contract interpretation and patent exhaustion, and should be decided on summary judgment. Accordingly Adobe moves for leave to file its own summary judgment motion due to its unique circumstances.

DATED: August 17, 2011

Respectfully Submitted,

By: */s/ David J. Healey*

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¹ The Defendants previously operated under an assumption that each of them had sixty pages for motions for summary judgment, some of which had been consumed by joint motions filed to date. This came from the wording of the case management order referring to the Local Rules, which are phrased in terms of parties rather than “per side”. Upon being instructed by the Court’s staff that the page limit was collective, Adobe decided the fairest and most prudent thing to do is to file this motion for leave.

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Counsel for Defendant

ADOBE SYSTEMS INCORPORATED

CERTIFICATE OF SERVICE

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 August 17, 2011.

/s/ Lorraine Morton

Lorraine Morton

CERTIFICATE OF CONFERENCE

David Healey, attorney for Adobe, spoke to John Campbell, attorney for Eolas on August 17, 2011, and Eolas opposes the motion.

/s/ David J. Healey

David J. Healey

CERTIFICATION OF AUTHORIZATION TO SEAL

I hereby certify that the Court has granted authorization to seal the foregoing document and the attachments thereto [Dkt. No. 423].

/s/ David J. Healey

David J. Healey