

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

EOLAS TECHNOLOGIES
INCORPORATED,

PLAINTIFF,

v.

ADOBE SYSTEMS INC., et al.,

DEFENDANTS.

§ Civil Action No. 6:09-CV-446-LED

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JURY TRIAL DEMANDED

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**DEFENDANTS' MOTION FOR LEAVE TO CLARIFY
OR EXCEED PAGE LIMITATIONS**

Defendants Adobe Systems, Inc., Amazon.com, Inc., CDW LLC, Citigroup Inc., Google, Inc., J.C. Penney Corp., Inc., Staples, Inc., Yahoo! Inc., and YouTube LLC (collectively, “Defendants”) respectfully move pursuant to Local Rule CV-7(l) to clarify, and if applicable exceed, the page limitations for summary judgment motions, and would state as follows:

The Docket Control Order provides, for dispositive motions, that “[m]otions shall comply with Local Rule CV-56 and Local Rule CV-7.” [Dkt. No. 249 at 3]. With respect to the page limit applicable to summary judgment motions, Local Rule CV-7(a)(3)(A) further provides that “a party’s summary judgment motions shall not exceed sixty pages collectively, excluding attachments.” In this case, there are 9 separate and distinct parties remaining as defendants and counterclaimants.

So far, the defendants have filed three summary judgment motions:

- a Motion for Partial Summary Judgment of Indefiniteness joined by all defendants (13 pages) [Dkt. No. 568];
- a Motion for Partial Summary Judgment of Intervening Rights joined by all defendants (10 pages) (“Intervening Rights Motion”) [Dkt. No. 567]; and
- Go-Daddy alone filed a Motion for Summary Judgment of Noninfringement Based on Its License Defense (14 pages) (“Go-Daddy License Motion”) [Dkt. No. 790].

That is a total of 37 pages of summary judgment motion briefing. However, all defendants are concurrently withdrawing the Intervening Rights Motion. So of the 24 pages of summary judgment motions that would remain pending for adjudication, 14 pages are associated with the Go-Daddy License Motion. When Go-Daddy submitted its own motion on the licensing issues, because of Local Rule CV-7(a)(3)(A)’s reference to a “party” none of the Defendants

objected to that filing on the grounds that it would consume almost a quarter of the group's summary judgment allocation. If they had known that it would, they would have done so. For that reason, the Defendants request that the Court not count the 14 page Go-Daddy License Motion against the 60 page "per-side" summary judgment limit or, if it does, grant Defendants 14 additional pages for their motions.

All the defendants have worked hard to consolidate their briefing in joint motions and are submitting the following summary judgment motions jointly, subject to the Court's disposition of this motion to clarify or exceed page limits:

- Motion for Summary Judgment of Invalidity Under §102(b) (7 pages);
- Motion for Summary Judgment of Invalidity for Lack of Written Description (7 pages);
- Motion for Partial Summary Judgment of Non-Infringement Based on Divided Infringement (8 pages);
- Motion for Summary Judgment of Noninfringement Based on Microsoft/Apple License Defense (20 pages)¹; and
- Motion for Summary Judgment of No Enhanced Damages for Willful Infringement (5 pages).

In sum, Defendants file this motion to clarify the page limits applicable to each individual Defendant as well as to all the Defendants collectively.² In particular, whereas Go Daddy has filed the Go-Daddy License Motion on behalf of Go-Daddy only and joined by no other Defendants, Defendants request that the Go-Daddy License Motion be excluded from the limit

¹ Go-Daddy is not a party to this motion.

² Adobe is also filing an individual motion seeking leave to file a separate summary-judgment motion that is unique to Adobe's circumstances.

remaining for summary judgment motions filed on behalf of other Defendants individually and for Defendants collectively, or the Defendants be permitted to exceed the page limit by 14 pages if the limit is being applied “per side” rather than per “party.”

Respectfully submitted,

Dated: August 17, 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 this 17th day of August 2011. All other counsel of record will be served via facsimile or first class mail.

/s/ Cynthia Jacobs

Cynthia Jacobs

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, in compliance with Local Rule CV-7(h), counsel for Amazon.com, Inc. and Yahoo! Inc. Edward Reines conferred in good faith in a phone conversation with counsel for Eolas Technologies, Inc. John Campbell on August 17, 2011. Counsel for Eolas indicated that Eolas opposes the relief requested herein, and after a full and thorough discussion of the parties' positions it was agreed that an impasse was reached, leaving an open issue for the court to resolve.

/s/ Edward R. Reines

Edward R. Reines