

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

EOLAS TECHNOLOGIES	§	
INCORPORATED,	§	
	§	
PLAINTIFF,	§	Civil Action No. 6:09-CV-446-LED
	§	
v.	§	
	§	
ADOBE SYSTEMS INC, et al.,	§	JURY TRIAL DEMANDED
	§	
DEFENDANTS.	§	

**PLAINTIFF’S AND SEVERAL DEFENDANTS’ JOINT MOTION TO VACATE
THE SCHEDULE AND FOR CASE MANAGEMENT CONFERENCE AT THE
AUGUST 31, 2011 HEARING**

Plaintiff, Eolas Technologies Incorporated (“Eolas”), and Several of the Defendants herein, Adobe Systems, Inc., Amazon, Inc., CDW, Citigroup, Inc., Go-Daddy, Inc., Google, Inc., J.C. Penny, Inc., Staples, Inc., and Yahoo, Inc., jointly move to vacate the schedule (including pretrial and trial date); to vacate all other due dates and deadlines pending amendment of the scheduling order; and to put on the regular briefing schedule under Local Rule 7 the Plaintiff’s Motion to Join the Regents of the University of California. These Moving Parties also move for a case management conference to be held at the August 31, 2011 hearing. In connection with the requested relief, the Parties state the following:

1. **Statement by Eolas:** Eolas plans to file a Motion for Reconsideration or In The Alternative, Certification for Interlocutory Appeal, on the

construction of “executable application.” Additionally, Eolas may amend its infringement contentions under the Local Patent Rule 3.6 and supplement its expert report(s) accordingly. Eolas does not seek to re-litigate claim construction or re-open fact discovery or expert reports generally.

2. **Statement by Defendants:** Defendants will oppose *any inappropriate* requests by Plaintiff for amendment of contentions or motion to supplement expert reports, as well as the re-opening of fact discovery as to Defendants, re-litigating claim construction, and/or adding new products to the case.¹ Defendants have conferred with Plaintiff on Plaintiff’s Motion for Reconsideration of “executable application” and generally oppose it. Defendants are considering Eolas’ request for Interlocutory Appeal and, should there be such an appeal, the appropriate scope of the appeal. Each Defendant reserves its right to evaluate and consent to, or contest, any issue, and to raise its own issues as required.
3. Moving Parties agree that under these circumstances a September 22, 2011 pretrial conference, and an October 2011 trial, no longer appear realistic. The Moving Parties ask that the remainder of the current schedule be vacated; that all pending deadlines for motions, answers or other filings in

¹ Some Defendants believe that any amendment of contentions or expert reports or additional discovery by Eolas is not warranted here. However, Defendants will meet and confer in good faith on any motion or request by any party. This is a general response to the Statement by Eolas.

this Court be stayed pending a new case management plan; and that the remaining briefing on the pending Motion for Joinder of the Regents of the University of California be put on the regular Local Rule 7 briefing schedule.

4. The Moving Parties ask the Court to discuss at the August 31, 2011 hearing a plan to bring this litigation to a conclusion without generally re-opening discovery, issued Orders or any other deadlines that have passed.
5. The Moving Parties have agreed to work together to submit such a revised schedule and case management plan to the Court within two weeks of the hearing, with the benefit of guidance from the Court, which generally does not re-open pleading, discovery or motion deadlines already passed, except for specific points the Parties may agree on or that the Court may order for good cause shown.

The parties request that, at the August 31, 2011 hearing, the Court discuss and, to the extent practical, prudent and possible, provide guidance as follows:

1. Determine from discussion with the Parties which pending Motions, if any, may still proceed regardless of claim construction (e.g., Weinstein and Bari Daubert Motion, License Motions, etc.), while suspending briefing on remaining Motions.
2. The Court might also explore with the Parties potential trial dates and trial staging.

3. If the Court vacates the schedule, the pending Motion regarding resetting deadlines for Frito-Lay may be moot depending on the rulings and guidance from the Court.
4. If the Court puts Eolas' Motion to Join the Regents on the regular Local Rule 7 briefing schedule as requested, argument on this Motion will not be needed on August 31, and a normal briefing schedule may permit resolution of this issue.

CONCLUSION

Wherefore the Movants ask that the Court grant the relief requested in this Motion.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that all parties have conferred on this Plaintiff's and Several Defendants' Joint Motion to Vacate the Schedule and For Case Management Conference at the August 31, 2011 Hearing.

Frito-Lay Inc. opposes this motion and says "Frito-Lay is not joining this motion because it has filed a motion for a separate trial based, inter alia, on its statement that severance of the claims against Frito-Lay is appropriate and Eolas' and Frito-Lay's need to take discovery, serve expert reports, file amended pleadings and complete other pretrial tasks that occurred while the action was stayed between Eolas and Frito-Lay."

/s/ David J. Healey
David Healey

CERTIFICATE OF SERVICE

I certify that all parties were served through their counsel via ECF on this 31st Day of August, 2011.

/s/ David J. Healey
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