

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

Eolas Technologies Incorporated,	§	
	§	
Plaintiff,	§	Civil Action No. 6:09-CV-00446-LED
	§	
vs.	§	
	§	
Adobe Systems Inc., Amazon.com, Inc.,	§	JURY TRIAL
Apple Inc., Argosy Publishing, Inc.,	§	
Blockbuster Inc., CDW Corp.,	§	
Citigroup Inc., eBay Inc., Frito-Lay, Inc.,	§	
The Go Daddy Group, Inc., Google Inc.,	§	
J.C. Penney Company, Inc., JPMorgan	§	UNDER SEAL
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.	§	

**DECLARATION OF DAVID M. MARTIN JR. IN SUPPORT OF
EOLAS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT OF INVALIDITY FOR LACK OF WRITTEN DESCRIPTION**

I, David M. Martin Jr., do state and declare as follows:

1. I have been retained as a technical expert by Eolas Technologies, Inc. ("Eolas") to address the issues of validity and infringement of claims 1 and 6 of U.S. Patent No. 5,838,906 patent (herein the '906 patent) and claims 1-3, 8, 10-11, 16-18, 20-22, and 36-43 of U.S. Patent No. 7,599,985 (herein the '985 patent) (collectively "patents-in-suit"). I earned a Ph.D. in 1999 from Boston University in Computer Science. I earned a Bachelor of Science degree, with distinction, in 1993 from Iowa State University in Computer Science and Mathematics. My Ph.D. research was in the area of Internet security and privacy. Since obtaining my Ph.D., I have worked at University of Denver as an Assistant Professor, Boston University as a Research Assistant Professor, and University of Massachusetts Lowell as an Assistant

Professor. In these positions, I performed research in the areas of computer security and privacy. I have worked with the Internet and associated technologies since the late 80s. I first used the Mosaic browser in 1993. I make this declaration in support of Eolas' Response to Defendants' Motion for Summary Judgment of Invalidity for Lack of Written Description, filed herewith. Unless otherwise stated, the matters contained in this declaration are of my own personal knowledge and, if called as a witness, I could and would testify competently to the matters set forth herein.

2. I understand that the written description requirement is a question of fact. I further understand that the requirement seeks to answer whether a person of ordinary skill at the time of the filing of the patent application would have believed the inventor had possessed of the claimed subject matter. As well, I understand the requirement varies depending on the context, nature and scope of the claims, and on the complexity and predictability of the relevant technology. Furthermore, I understand that the claims are not necessarily limited to the specific embodiments of the invention described in the specification, particularly when the specification does not unambiguously limit the scope of the invention.

3. I understand that the Court has construed "embed text format" to mean "coded information that specifies to a browser application that an object is to be embedded in a displayed hypermedia document."

4. In my opinion, the specification provides an adequate written disclosure of the "embed text format" as this term was construed by the Court. Specifically, the written disclosure confirms that as of the October 17, 1994 filing of the patents-in-suit, the inventors of the patents-in-suit had possession of the claimed embed text format.

5. The specification teaches that tags like EMBED can be used as the claimed embed text format.
U.S. Patent No. 5,838,906 col 14:32-33, col.12:54-13:18.

6. However, and as recognized by the Court in its claim construction order, the disclosed embed text formats are not limited solely to the EMBED tag or tags in general. Memorandum Opinion and Order (Docket 914) at 15 (“[The ‘embed text format’] term is supported in the specification by the disclosure of the EMBED tag (‘906 patent, 14:32–33); however, the term is not limited to only a tag.”).

7. For example, the specification teaches the use of an IMAGE3D tag as an example of an embed text format. The specification notes that appendices have been attached that provide “details of a specific embodiment of the invention in conjunction with the discussion of the routines in this specification.” U.S. Patent No. 5,838,906 col.8:5–15, col.13:44–50. In these appendices, the inventors used the name MT_IMAGE3D and M_IMAGE3D to refer to the embed text format. See ‘906 Appendix A at 8 (M_IMAGE3D), 9 (MT_IMAGE3D), 174 (M_IMAGE3D), 302 (MT_IMAGE3D), 360 (MT_IMAGE3D and M_IMAGE3D), showing examples of the IMAGE3D embed text format. This is consistent with the testimony of Cheong Ang, one of the inventors, who in his July 22, 2011 deposition testified that “prior to using the tag e-m-b-e-d, IMAGE3D was used as another instance of an embed text format for HTML.” Deposition of Cheong Ang on 7-22-11 at 625:12–626:15. The draft of “Integrated Control of Distributed Volume Visualization Through the World-Wide Web” included as Attachment A to inventor Michael Doyle’s October 29, 1997 declaration in the ‘906 file history also shows the use of this prior embed text format, spelling it “IMG3D.”

8. As a further example, the specification also teaches that applications written in interpreted scripting languages, such as PostScript, may be used with the invention. Specifically, the specification of the patents teaches that:

As shown in Table II, the EMBED tag includes TYPE, HREF, WIDTH and HEIGHT elements. The TYPE element is a Multipurpose Internet Mail Extensions (MIME) type. Examples of values for the TYPE element are “application/x-vis” or “video/mpeg”. The type “application /x-vis” indicates that an application named “x-vis” is to be used to handle the object at the URL specified by the HREF. Other types are possible such as “application/x-inventor”, “application/postscript” etc.

U.S. Pat No. 5,838,906 col.12:66–13:7 (emphasis mine). PostScript is an interpreted script language. “PostScript Reference” at <http://www.adobe.com/products/postscript/pdfs/PLRM.pdf> at 24–25 (“The PostScript interpreter executes the PostScript language according to the rules in this chapter.”). Another example of an interpreted script language is JavaScript.

9. In my opinion, while the specification describes the EMBED tag as one example embodiment of an embed text format, it did not limit itself to just that embodiment. In fact, the specification specifically notes that the EMBED tag embodiment is non-limiting. The specification states that “[t]able II, below, shows *an example* of an HTML tag format used by the present invention to embed a link.” U.S. Patent No. 5,838,906 col.12:54–56 (emphasis mine). As well, inventors of the patents, Cheong Ang and Michael Doyle in particular, both have noted in their depositions that the embodiment is non-limiting. Deposition of Cheong Ang on 7-22-11 at 581:5–7 (“So this description actually provides an example and it describes an embodiment of the invention.”); Deposition of Michael Doyle on 6-30-11 at 483:25–484:3 (“This is one example of an embed text format. It could be implemented in any manner that is consistent with the language in the claim, in any particular claim, in either of the patents.”).

10. Having reviewed the specification, in my opinion, the inventors of the patents-in-suit demonstrated to those of ordinary skill in the art at the time of filing that they possessed what was claimed, including an “embed text format” construed to mean “coded information that specifies to a browser application that an object is to be embedded in a displayed hypermedia document.”

11. I declare under penalty of perjury that the foregoing is a true and correct representation of my opinion and that this declaration was executed on September 28, 2011, in Des Plaines, Illinois.



David M. Martin, Jr. Ph.D.