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Attorneys for Plaintiff Google Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GOOGLE INC.,  
Plaintiff,

v.

EOLAS TECHNOLOGIES  
INCORPORATED,  
Defendant.

Case No. 3:15-cv-05446-WHO

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF  
U.S. PATENT NO. 9,195,507**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Google Inc. (“Google”) seeks a declaratory judgment of non-infringement of  
2 United States Patent No. 9,195,507 (“the ‘507 patent”) as follows:

3 **I. NATURE OF THE ACTION**

4 1. Google brings this action seeking a declaratory judgment of non-infringement that  
5 arises under the patent laws of the United States, Title 35 of the United States Code. Google  
6 brings this action against Eolas Technologies, Inc. (“Eolas”), on information and belief, the owner  
7 of the ‘507 patent. The face of the ‘507 patent lists Eolas as the assignee (Ex. A). Google  
8 requests this relief because Eolas continues to allege that Google infringes patents issuing from  
9 applications that are continuations of U.S. Patent Application No. 08/324,443 (“the ‘443  
10 Application”), including the ‘507 patent.

11 2. In 2009, Eolas (along with The Regents of the University of California  
12 (“Regents”)) first accused Google of infringing U.S. Patent No. 5,838,906 (“the ‘906 patent”)  
13 issued on November 17, 1998, and U.S. Patent No. 7,599,985 (“the ‘985 patent”) (collectively,  
14 “the Eolas I Patents”), which issued on October 6, 2009 as a result of a series of continuation  
15 applications that claimed priority to the parent ‘443 Application. *Eolas Techs. Inc. v. Adobe Sys.*  
16 *Inc., et al.*, C.A. No. 09-cv-446 (“Eolas I”). The Eolas I Patents generally claimed running  
17 applications on a distributed hypermedia computer network, allowing users to interact with online  
18 video, music or audio clips, Internet search features, and maps and embedded applications in a  
19 browser. As set forth more fully below, after a jury trial, every asserted claim of the Eolas I  
20 Patents was found to be invalid. The U.S. Court of Appeals for the Federal Circuit affirmed on  
21 July 22, 2013.

22 3. In a letter dated December 19, 2013 received by Google on December 23, 2013 (the  
23 “December 23, 2013 letter,” Ex. C), Eolas accused Google of infringing U.S. Patent Nos.  
24 8,082,293 (“the ‘293 patent”) and 8,086,662 (“the ‘662 patent”) (collectively, “the Eolas II  
25 Patents”) by making, using, selling, offering for sale, and/or importing into the United States:  
26 “(i) web pages and content to be interactively-presented in browsers, including ... content  
27 accessible via [www.google.com](http://www.google.com) . . . (ii) software, including, without limitation, browser software  
28 and software that allows content to be interactively-presented . . . including, without limitation,

1 Chrome for Windows and Chrome for the Mac and/or (iii) computer equipment . . . that stores,  
2 serves, and/or runs any of the foregoing” (the “Eolas II Accused Systems”).

3 4. After receiving Eolas’ December 23, 2013 letter, Google filed a Complaint for  
4 Declaratory Judgment of Non-Infringement of the Eolas II Patents in the Northern District of  
5 California on December 30, 2013 in *Google Inc. v. Eolas Technologies Incorporated and The*  
6 *Regents of the University of California*, Civil Action No. 3:13-cv-05997 (N.D. Cal.) (“Google’s  
7 Eolas II DJ”).

8 5. On November 24, 2015, Eolas sued Google alleging infringement of the ’507  
9 patent in the Eastern District of Texas in *Eolas Technologies Incorporated v. Google Inc.*, Civil  
10 Action No. 6:15-cv-01039. The ’507 patent and the Eolas II Patents are siblings to each other –  
11 that is, all three issued from continuation applications that claim priority to the single ’443  
12 Application identified above, and all claim essentially the same subject matter. The ’507 patent  
13 and the Eolas II Patents are also siblings with the Eolas I Patents.

14 6. A justiciable controversy therefore exists between these parties concerning the  
15 scope of the ’507 patent and Eolas’ allegations of infringement sufficient to support the relief  
16 sought by Google.

## 17 **II. THE PARTIES**

18 7. Google is a corporation organized and existing under the laws of the State of  
19 Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View,  
20 California, 94043. Google’s mission is to organize the world’s information and make it  
21 universally accessible and useful.

22 8. On information and belief, Eolas is a corporation organized and existing under the  
23 laws of the State of Texas. Eolas lists its place of business as 313 East Charnwood Street, Tyler,  
24 Texas 75701. Eolas is listed as the owner by assignment of the ’507 patent on the face of the  
25 patent. (See Ex. A.)<sup>1</sup>

26  
27 <sup>1</sup> Google filed its initial Complaint against both Eolas and the Regents, noting that “[n]o  
28 assignment to [Eolas] can be located on the U.S. Patent Office’s Assignment Database,”  
suggesting that “the Regents may retain an ownership of the ’507 patent.” (Dkt. 1.)

1 **III. JURISDICTION**

2 9. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201, and  
3 under the patent laws of the United States, 35 U.S.C. §§ 1-390.

4 10. This Court has subject matter jurisdiction over this action under 28 U.S.C.  
5 §§ 1331, 1338(a), and 2201(a).

6 11. This Court has personal jurisdiction over Defendant Eolas. Eolas was first  
7 incorporated in California in 1994, then merged into a Delaware corporation before becoming a  
8 Texas Corporation. (See Ex. F.) Eolas maintained continuous and systematic contacts with the  
9 State of California since its inception, including: (1) communications and business agreements  
10 with the Regents, a resident of the State of California, in which Eolas assisted the Regents to  
11 commercialize this patent family owned by the Regents; (2) Eolas acquired licenses, and later title,  
12 to the Eolas II Patents and related patents (including upon information and belief the '507 patent)  
13 from the Regents for the purpose of asserting such patents in litigation; (3) initiating patent  
14 litigation actions against a variety of California entities involving the Eolas II Patents and/or  
15 related patents, including Adobe Systems Inc., Apple Inc., eBay Inc., Facebook, Google, Sun  
16 Microsystems Inc., The Walt Disney Company, Yahoo! Inc., and YouTube, LLC; (4) entering into  
17 settlement/licensing agreements with California entities including Adobe Systems Inc., Apple Inc.,  
18 eBay Inc., Oracle Corp. and Sun Microsystems Inc., that allow such entities to continue activities  
19 alleged by Eolas to infringe the Eolas II Patents and/or related patents; (5) directing  
20 communications to Google in California (and, upon information and belief, other California  
21 entities) alleging infringement of the Eolas II Patents and/or related patents; (6) availing itself of  
22 the Northern District of California by seeking judicial relief in a case against Microsoft, Civil  
23 Action No. 99-mc-00212-CRB; (7) previously submitting to the jurisdiction of this Court and/or

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24 Subsequent to the filing of the Complaint, on December 1, 2015, Eolas submitted to the  
25 United States Patent & Trademark Office a copy of a Patent Assignment Agreement in  
26 which the Regents assigned their rights, title and interest in continuation application  
27 13/292,434, which issued as the '507 patent, to Eolas. (Ex. B.) Counsel for Eolas and the  
28 Regents subsequently confirmed that the Patent Assignment Agreement is presently  
operative and that the Regents retain no ownership interest in or right to the '507 patent.  
(Ex. E.) Based on these representations, and without waiver of any positions, Google no  
longer asserts its claim in this action against the Regents.

1 purposefully availing itself of the jurisdiction of this Court by asserting counterclaims in Google's  
2 Eolas II DJ, and *J.C. Penney v. Eolas Technologies Incorporated and the Regents of the*  
3 *University of California*, Civil Action No. 3:13-cv-06003, both filed in the United States District  
4 Court for the Northern District of California; and (8) at one time incorporating in the State of  
5 California and identifying the address of its registered agent for service at 2710 Gateway Oaks  
6 Drive, Suite 150N, Sacramento, California 95833-3502. (*See Ex. F.*)

7 12. On information and belief, Eolas has had and has continuing obligations to the  
8 Regents sufficient to establish personal jurisdiction. For example, the 2009 Second Amended  
9 License Agreement between Eolas and the Regents reflected an ongoing licensing and royalty  
10 arrangement between the parties. (*See Ex. G.*)<sup>2</sup> For example, this agreement provided for the  
11 marketing and sale of patents, joint prosecution and defense of patent-related actions,  
12 indemnification of the Regents, regular recordkeeping, bookkeeping, accounting, and reporting to  
13 the Regents for patent-related activities, the payment of patent royalties to the Regents, and a duty  
14 of due diligence in all patent-related activities. (*Id.*; *see also Ex. M.*)

15 13. On information and belief, Eolas also chose to avail itself of the benefits and  
16 protections of California's laws by consenting to California law in the choice of law provision in  
17 the 2009 Second Amended License Agreement with the Regents.

18 14. On information and belief, in the 2015 Patent Assignment Agreement, Eolas, again,  
19 has continuing obligations to the Regents sufficient to establish personal jurisdiction, including the  
20 requirement to use reasonable efforts to enter license agreements concerning the patents-in-suit  
21 and to notify the Regents of any such licenses, indemnification of the Regents, regular  
22 recordkeeping, bookkeeping, accounting, and reporting to the Regents, and the payment of patent  
23 royalties to the Regents, and previous agreements. (*Exs. B, G.*) In addition, Eolas, again, has  
24 chosen to avail itself of the benefits and protections of California's laws by consenting to  
25 California law in the choice of law provision in its Patent Assignment Agreement with the  
26 Regents. (*Ex. B.*) In addition, on information and belief, Eolas reasonably can anticipate being  
27

28 <sup>2</sup> Ex. G is marked "Highly Confidential – Attorney's Eyes Only," but was entered into the public trial record during the trial that resulted in the verdict of invalidity.

1 subject to litigation in California based on its creation and incorporation in California for five  
2 years, and its acts of entering into its original and subsequent licensing and assignment agreements  
3 with the Regents while in California, and engaging in patent-related activities in California before  
4 relocating to Texas. (Ex. M.)

5 15. On information and belief, Eolas's business relationship with the Regents, and its  
6 associated licensing and enforcement efforts directed towards California residents, have generated  
7 substantial revenues. For example, the 2009 Second Amended License Agreement between Eolas  
8 and the Regents reflects a then-ongoing licensing and royalty arrangement between the parties.  
9 (See Ex. G.)<sup>3</sup> The 2015 Patent Assignment Agreement further confirms that "for many years,  
10 Eolas has . . . paid financial consideration to The Regents" for exploiting patent rights covering  
11 "inventions and discoveries . . . made in the course of research at the University of California, San  
12 Francisco campus (UCSF) by Michael Doyle et al." (Ex. B.) Further, in the prior litigation  
13 commenced in 2009, the Regents joined that lawsuit as plaintiff in light of its ownership interest in  
14 the patents asserted in that 2009 litigation and expressly to "support its licenses." (See Ex. H.) On  
15 information and belief, in the litigation commenced in 2013, the Regents had real and substantial  
16 legal interests in the Eolas II Patents, including its right to terminate or reduce Eolas's rights under  
17 the license, to sublicense the Eolas II Patents to others in certain circumstances, to Eolas's due  
18 diligence with respect to patent-related activities, to publish and use technical data from any  
19 research related to the patents, to the payment of royalties, to a portion of any judgment entered in  
20 favor of the patents, and to reports, accounting, and recordkeeping by Eolas regarding its patent-  
21 related activities. (Ex. M.) In the 2015 Patent Assignment Agreement, the Regents retain a 5% of  
22 net revenues received under each license agreement or monetary award concerning the '507  
23 patent. (Ex. B.)

24 16. Venue is proper in this District under 28 U.S.C. §§ 1391(b & c) because a  
25 substantial part of the events giving rise to Google's claim occurred in this district, and because  
26 Eolas is subject to general and/or personal jurisdiction here.

27 <sup>3</sup> Ex. G is marked "Highly Confidential – Attorney's Eyes Only," but was entered into the public  
28 trial record during the trial that resulted in the verdict of invalidity.

1           17.     A justiciable controversy exists between Google and Eolas as to whether Google is  
2 infringing or has infringed the '507 patent.

3 **IV.    INTRADISTRICT ASSIGNMENT**

4           18.     For purposes of intradistrict assignment under Civil Local Rules 3-2(c) and 3-5(b),  
5 this Intellectual Property Action will be assigned on a district-wide basis.

6 **V.    FACTUAL BACKGROUND**

7           **A.    The '443 Patent Application And Patents**

8           19.     The '443 Application was filed on October 17, 1994. This application was  
9 generally drawn to interactive distributed Internet applications. The patent application named  
10 Michael David Doyle, a former researcher at the University of California, as an inventor. He  
11 assigned all rights, title and interest in the '443 Application to the Regents.

12           20.     Five patents relevant to this matter issued from the original '443 Application. The  
13 previously-asserted '906 patent issued on November 17, 1998. Its claims were drawn generally to  
14 a method of running applications on a distributed hypermedia computer network – that is, the  
15 patent claims a method of allowing users to interact with online video, music or audio clips,  
16 Internet search features, and maps and embedded applications in a browser. The previously-  
17 asserted '985 patent issued on October 6, 2009, as a result of a series of continuation applications  
18 that claimed priority to the parent '443 Application. Its claims were also drawn to methods of  
19 running applications on a distributed hypermedia computer network. As set forth more fully  
20 below, after a jury trial, every asserted claim of the Eolas I Patents were found to be invalid. The  
21 U.S. Court of Appeals for the Federal Circuit affirmed on July 22, 2013.

22           21.     The Eolas II Patents, like their sibling Eolas I Patents, also issued on continuation  
23 applications claiming priority to the '443 Application. Also like their siblings, the claims of the  
24 Eolas II Patents are drawn to methods of running applications on a distributed hypermedia  
25 computer network. Further, during prosecution of the Eolas II Patents, the Patent Office rejected  
26 all pending claims in the applications for both the '293 and '662 patents under the doctrine of  
27 double patenting. The Examiner thus concluded that the pending claims of the Eolas II Patents  
28 were not patentably distinct from the claims of the Eolas I Patents. (See Exs. I & J.) Eolas did not



1 traverse the Examiner's conclusions; rather, Eolas tacitly acknowledged that the pending claims  
2 were not patentably distinct from the claims of the Eolas I Patents by instead filing a terminal  
3 disclaimer to overcome the rejections. (See Exs. K & L.)

4 22. The '507 patent, like its sibling Eolas I and Eolas II Patents, also issued on a  
5 continuation application claiming priority to the '443 Application and lists as inventors Michael  
6 Doyle, David C. Martin of San Jose, California, and Cheong S. Ang of Los Altos, California.  
7 Also like its siblings, the claims of the '507 patent are directed to running applications on a  
8 distributed hypermedia computer network.

9 **B. Eolas Was Established to Commercialize and Enforce the '443 Application**

10 23. Mr. Doyle founded Eolas in 1994, contemporaneously with the filing of the '443  
11 Application. He formed Eolas first as a California company expressly to "assist the University of  
12 California in commercializing" the inventions disclosed in the '443 Application. (See Eolas  
13 website <http://www.eolas.com/about us.html>.) Eolas has represented the Regents' interests in  
14 numerous litigations asserting the patents that issued from the '443 Application.

15 24. On information and belief, in 1999, Eolas sued Microsoft Corporation in the  
16 Northern District of Illinois alleging infringement of the '906 patent. According to the Office of  
17 the President, the Regents joined that lawsuit because it was an important lawsuit and the  
18 "University expects to be fairly compensated for its patented technology." (See  
19 <http://www.ucop.edu/news/archives/2003/aug11art1qanda.htm>.) On further information and  
20 belief, Microsoft later settled the litigation by licensing the '906 patent from Eolas.

21 25. In October 2009, Eolas filed a patent infringement suit in the Eastern District of  
22 Texas against multiple companies, including Google and many others based in California, alleging  
23 infringement of the Eolas I Patents. Eolas subsequently amended its complaint to add the Regents  
24 of the University of California as a plaintiff. Prior to the conclusion of trial, several defendants,  
25 including California-based companies Adobe Systems, Inc., Apple Inc., eBay Inc., and Sun  
26 Microsystems Inc., settled with Eolas and were dismissed from the suit. On information and  
27 belief, those defendants entered into settlement agreements in which each was granted licenses to  
28 the Eolas I Patents.



1           26.     Google and other defendants declined to settle and proceeded to trial. The jury  
2 returned with a verdict finding every asserted claim of the Eolas I Patents to be invalid. The trial  
3 court entered final judgment on the jury's verdict and, on July 22, 2013, the Federal Circuit  
4 affirmed the judgment in its entirety.

5           27.     In September 2012, Eolas filed patent infringement lawsuits against several more  
6 California-based companies, including Facebook, Inc. and The Walt Disney Company, this time  
7 alleging infringement of the Eolas II Patents.

8           28.     On December 23, 2013, Google received Eolas' December 23, 2013 cease-and-  
9 desist letter, accusing Google of infringing the Eolas II Patents, thereby giving rise to Google's  
10 Eolas II DJ.

11           **C.     A Justiciable Controversy Exists Regarding Google's Alleged Infringement**

12           29.     As set forth above, Eolas accused Google of infringing the closely-related Eolas I  
13 Patents in Eolas' 2009 lawsuit. Google was one of the defendants that successfully tried the  
14 asserted claims of the Eolas I Patents to a verdict of invalidity.

15           30.     Eolas sent a December 23, 2013 letter to accuse Google of infringing the Eolas II  
16 Patents. Eolas' accusations threatened Google's research and development activity of the Eolas II  
17 Accused Systems, threatened Google's fundamental work to develop innovations to organize  
18 Internet content to render it accessible and useful, and threatened Google's business and  
19 relationships with its customers and partners. The December 23, 2013 letter was sent by Eolas'  
20 litigation counsel to Google, copying Google's prior litigation counsel.

21           31.     After receiving Eolas' December 23, 2013 letter, Google filed its Eolas II DJ on  
22 December 30, 2013.

23           32.     Eolas moved to dismiss Google's Eolas II DJ for lack of personal jurisdiction over  
24 Eolas pursuant to Fed. R. Civ. P. 12(b)(2) and subject matter jurisdiction over the Regents  
25 pursuant to Fed. R. Civ. P. 12(b)(1). (Ex. D.) In this motion, Eolas also requested that the Court  
26 transfer the case to the Eastern District of Texas, where cases addressing the same patents were  
27 pending.

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1           33.     The Court denied Eolas' motion to dismiss on June 24, 2014. (Ex. M.) The Court  
2 determined that Eolas had continuing obligations to the Regents sufficient to establish personal  
3 jurisdiction, including the marketing and sale of the patents, joint prosecution and defense of  
4 patent-related actions, indemnification of the Regents, regular recordkeeping, bookkeeping,  
5 accounting, and reporting to the Regents for patent-related activities, the payment of patent  
6 royalties to the Regents, and a duty of due diligence in all patent-related activities. Further, the  
7 Court found that Eolas's consent to California law in the choice of law provision in the licensing  
8 agreement between Eolas and the Regents demonstrated that Eolas had chosen to avail itself of the  
9 benefits and protections of California's laws. In addition, the Court found that Eolas's creation  
10 and incorporation in California for five years, and its acts of entering into its original licensing  
11 agreement with the Regents while in California, and engaging in patent-related activities in  
12 California before relocating to Texas, demonstrated that Eolas reasonably could have anticipated  
13 being subject to litigation in California, and were sufficient contacts to establish personal  
14 jurisdiction.

15           34.     After the Court denied Eolas' motion to dismiss, Eolas filed an answer to Google's  
16 Eolas II DJ on July 8, 2014, asserting counterclaims alleging that Google infringed the Eolas II  
17 Patents. (Ex. N.) Eolas subsequently filed a motion to voluntarily dismiss those counterclaims  
18 under Fed. R. Civ. P. 41(a)(2). (Ex. O.) Eolas then filed a corrected answer and counterclaims  
19 clarifying that the infringement counterclaims were Eolas's alone. (Ex. P.) Shortly thereafter, the  
20 Regents joined Eolas's motion to dismiss. (Ex. Q.)

21           35.     In this motion, Eolas sought the following: (1) dismissal with prejudice of Eolas's  
22 counterclaims of infringement of the Eolas II Patents; (2) dismissal without prejudice of Google's  
23 declaratory judgment claims of non-infringement of the Eolas II Patents; and (3) dismissal without  
24 prejudice of "any claims Eolas may have against Google for any patent claim in any other patent  
25 or patent application, including continuation application No. 13/292,434, filed November 9,  
26 2011." (Ex. O, 2:9-11.) Continuation application 13/292,434 is the application that resulted in the  
27 '507 patent, demonstrating that Eolas anticipated asserting this patent against Google during the  
28 pendency of the Declaratory Judgment Action in the Northern District of California.

1           36. Google opposed Eolas' motion on two grounds: (1) Eolas' motion did not dispose  
2 of the controversy between the parties because it failed to dismiss claims against Google's  
3 customers; and (2) Eolas' motion sought to dismiss prospective claims that were not part of the  
4 action or did not yet exist as improper under Rule 41(a), which authorizes only the dismissal of  
5 claims actually asserted. (Ex. R.) With respect to Eolas' request for a dismissal without prejudice  
6 of its claims as to other patents and patent applications, Eolas stated that "Eolas and the Regents  
7 want to make undeniably clear that the dismissal of their existing and potential claims against  
8 infringers of the *patents-in-suit* does not prejudice their current and future claims against  
9 infringers of *other* patents, including those that may issue in the future." (Ex. S, 4:14-16 (emphasis  
10 in original).)

11           37. On December 4, 2014, by stipulation of the parties, this Court "dismissed with  
12 prejudice any and all claims of infringement, including direct and indirect infringement, of the  
13 patents-in-suit that Eolas or the Regents has or may have in the future, including any claims of  
14 past, present or future infringement of the patents-in-suit against: (a) Google; (b) any Google  
15 affiliates; and/or (c) any users, customers, or Google partners with respect to Google products  
16 and/or services (including but not limited to services, components, hardware, software, websites,  
17 processes, machines, manufactures, and any combinations and components thereof, that are  
18 designed, developed, sold, licensed, or made, in whole or substantial part, by or on behalf of  
19 Google)[.]" (See Ex. T.)

20           38. On November 24, 2015 (the same day that the '507 patent issued), in an action  
21 stemming from the long history of litigation involving the Eolas I and Eolas II Patents, Eolas sued  
22 Google in the Eastern District of Texas alleging that Google's interactively-presented web pages  
23 and content, including search results and suggestions, and related devices and equipment,  
24 infringed the '507 patent, in *Eolas Technologies Incorporated v. Google Inc.*, Civil Action No.  
25 6:15-cv-01039.

26           39. For all these reasons, a justiciable controversy exists between Google and Eolas  
27 regarding the alleged infringement of any claim of the '507 patent.  
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**JURY DEMAND**

Google demands a jury trial on all issues and claims so triable.

DATED: January 20, 2016

Respectfully submitted,

QUINN EMANUEL URQUHART &  
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*/s/ David A. Perlson*

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