

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

The Regents of the University of California and Eolas Technologies Incorporated,	§	
	§	
	§	
Plaintiffs	§	CIVIL ACTION 6:11-cv-646
	§	
vs.	§	
	§	JURY TRIAL
Staples, Inc.,	§	
	§	
Defendant.	§	

PLAINTIFFS' ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs The Regents of the University of California (“University of California”) and Eolas Technologies Incorporated (“Eolas”) (collectively, “Plaintiffs”) file this Original Complaint for patent infringement against Defendant Staples, Inc. (“Staples”), and allege as follows:

I. PARTIES

1. At all times herein mentioned, the University of California was charged by State law with the duty of administering the University of California as a public trust, pursuant to Article IX § 9 of the California Constitution.

2. Eolas is a corporation organized and existing under the laws of Texas, with its principal place of business at 313 East Charnwood Street, Tyler, Texas 75701. Eolas conducts leading-edge research and development to create innovative technologies in the areas of interactive embedded and distributed applications, systems, data analysis, visualization, collaboration and networking. During the past 15 years, Eolas’ innovations have enabled

corporations around the world to enhance their products and improve their customers' website experiences by enabling browsers, in conjunction with servers, to act as platforms for fully interactive embedded applications. This advanced technology provides rich interactive online experiences for Web users worldwide.

3. Upon information and belief, Staples is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 500 Staples Drive, Framingham, Massachusetts 01702. Staples may be served with process by serving its registered agent, CT Corporation System, 155 Federal Street, Suite 700, Boston Massachusetts 02110-1727.

II. JURISDICTION AND VENUE

4. Plaintiffs repeat and re-allege the allegations in Paragraphs 1–3 as though fully set forth in their entirety.

5. This action arises under the patent laws of the United States, Title 35, United States Code § 1, *et seq.* This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

6. Personal jurisdiction exists generally over Staples because it has sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within the Eastern District of Texas. Personal jurisdiction also exists specifically over Staples because it, directly or through subsidiaries or intermediaries, makes, uses, offers for sale, sells, imports, advertises, makes available and/or markets products and services within the State of Texas, and more particularly, within the Eastern District of Texas, that infringe the patents-in-suit, as described more particularly below.

7. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391(b)–(c) and 1400(b).

III. PATENT INFRINGEMENT

8. Plaintiffs repeat and re-allege the allegations in Paragraphs 1–7 as though fully set forth in their entirety.

9. United States Patent No. 5,838,906 (“the ’906 Patent”) entitled “Distributed hypermedia method for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document,” and United States Patent No. 7,599,985 (“the ’985 Patent”) entitled “Distributed hypermedia method and system for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document” were duly and legally issued by the United States Patent and Trademark Office on November 17, 1998 (’906 Patent) and October 6, 2009 (’985 Patent) after full and fair examination and are owned by assignment by The Regents. The United States Patent and Trademark Office, after initially issuing the ’906 Patent, has affirmed its validity on two separate occasions, most recently in February 2009. The ’906 Patent and the ’985 Patent may be collectively referred to hereafter as “the Patents”.

10. Eolas has an exclusive license to the Patents that includes, without limitation, the following: (a) all exclusionary rights under the Patents, including, but not limited to, (i) the exclusive right to exclude others from making, using, offering for sale, or selling products embodying the patented inventions throughout the United States or importing such products into the United States, and (ii) the exclusive right to exclude others from using and otherwise practicing methods embodying the patented inventions throughout the United States; and (b) the

exclusive right to sue and seek damages for infringement of any of the exclusionary rights identified above.

11. On information and belief, Staples has directly and/or indirectly infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or indirectly, the '906 Patent and/or the '985 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority: (i) web pages and content to be interactively presented in browsers, including, without limitation, the web pages and content accessible via order.staplesadvantage.com, stapleslink.com, and eway.com and maintained on servers located in and/or accessible from the United States under the control of Staples; (ii) software, including, without limitation, software that allows content to be interactively presented in and/or served to browsers; and/or (iii) computer equipment, including, without limitation, computer equipment that stores, serves, and/or runs any of the foregoing.

12. Staples indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by active inducement under 35 U.S.C. § 271(b). Staples has induced and continues to induce users of the web pages, software, and computer equipment identified above to directly infringe one or more claims of the '906 Patent and/or the '985 Patent. Staples indirectly infringes one or more claims of the '906 Patent and/or the '985 Patent by contributory infringement under 35 U.S.C. § 271(c). By providing the web pages, software, and computer equipment identified above, Staples contributes to the direct infringement of users of said web pages, software, and computer equipment.

13. On information and belief, Staples has had knowledge of the '906 Patent and the '985 Patent at least as early as October 6, 2009, when Eolas filed its suit for infringement in Civil

Action No. 6:09-cv-446, to which Staples is a party, and has not ceased its infringing activities. Staples' infringement of the '906 Patent and '985 Patent has been and continues to be willful and deliberate.

14. As a direct and proximate consequence of the acts and practices of Staples in infringing and/or inducing the infringement of one or more claims of the '906 Patent and one or more claims of the '985 Patent, Plaintiffs have been, are being, and, unless such acts and practices are enjoined by the Court, will continue to suffer injury to their business and property rights.

15. As a direct and proximate consequence of the acts and practices of Staples in infringing, directly and/or indirectly, one or more claims of the '906 Patent and one or more claims of the '985 Patent, Plaintiffs have suffered, are suffering, and will continue to suffer injury and damages for which they are entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

16. In addition, the infringing acts and practices of Staples has caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to injunctive relief under 35 U.S.C. § 283.

IV. PRAYER FOR RELIEF

Plaintiffs pray for the following relief:

A. A judgment that Staples has infringed, directly and indirectly, one or more claims of the '906 Patent and one or more claims of the '985 Patent;

B. A judgment and order preliminarily and permanently enjoining Staples, its employees and agents, and any other person(s) in active concert or participation with it from infringing, directly or indirectly, the '906 Patent and the '985 Patent;

C. A judgment and order requiring Staples to pay Plaintiffs' damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;

D. An award of all costs of this action, including attorneys' fees and interest; and

E. Such other and further relief as the Court deems just and equitable.

V. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand that all issues be determined by a jury.

Dated: December 2, 2011.

McKool Smith, P.C.

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