

# Exhibit 4

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICROSOFT CORPORATION,

Plaintiff,

v.

EOLAS TECHNOLOGIES, INC.,

Defendant.

No. 10 CV 3820

Judge James B. Zagel

**DEFENDANT’S MOTIONS TO DISMISS; TO DENY PLAINTIFF’S REQUEST FOR  
PRELIMINARY INJUNCTION; OR, IN THE ALTERNATIVE,  
TO STAY OR TRANSFER**

NOW COMES defendant, EOLAS TECHNOLOGIES, INC., by and through its attorney, David C. Van Dyke, and for its motions to: (1) dismiss Microsoft’s declaratory judgment action for failure to state a claim upon which relief can be granted and for lack of subject matter jurisdiction pursuant to 12(b)(1) and 12(b)(6); (2) to deny plaintiff’s request for preliminary injunction; or (3) in the alternative, to stay or transfer. In support thereof, Eolas states as follows:

**ARGUMENT**

Microsoft’s declaratory judgment action should be dismissed pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiff’s declaratory judgment action fails to state a claim for breach of contract under Illinois law pursuant to the License Agreement. Microsoft alleges breach of the parties’ License Agreement occurred as a result of Eolas’ filing of the Texas action and Eolas’ refusal “to acknowledge the limits on its right to sue for infringement” neither of which can be a breach under the language of the License Agreement itself. Even if the declaratory judgment action states a claim, it should still be dismissed since Microsoft lacks subject matter jurisdiction under the Declaratory Judgment Act since it cannot demonstrate any

actual controversy pursuant to the License Agreement or Article III. Therefore, Microsoft's declaratory judgment action should be dismissed.

In the alternative, assuming *arguendo* that this Court denies the motions to dismiss, this Court should either stay this case pending the resolution of the Texas Action (6:09 CV 446) or transfer the matter to the Eastern District of Texas. The issues Microsoft raises here substantially overlap with the defenses raised by the defendants in the Texas Action and necessarily are already being litigated there. Additionally, this Court should deny Microsoft's request for a preliminary injunction to prevent Eolas from pursuing any litigation that violates Microsoft's interpretation of the License Agreement's terms, which reflects a bargain the parties did not agree to.

### **CONCLUSION**

WHEREFORE, defendant, EOLAS TECHNOLOGIES, INC., respectfully requests that this Court grant its motion to dismiss Microsoft's declaratory judgment action, deny plaintiff's request for a preliminary injunction, or, in the alternative, stay or transfer this case based on the foregoing arguments and attached Memorandum of Law.

Dated: August 12, 2010

Respectfully submitted,

/s/ David C. Van Dyke  
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