

# Exhibit HH



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

EOLAS TECHNOLOGIES )  
INCORPORATED, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MICROSOFT CORPORATION, )  
 )  
Defendant. )

**Civil Action No. 99 C 0626**

**Hon. James B. Zagel**

**EOLAS TECHNOLOGIES INCORPORATED'S  
MEMORANDUM IN SUPPORT OF CLAIM CONSTRUCTION**

**B. Eolas' Construction of Disputed Claim Terms Gives Those Terms Their Ordinary and Accustomed Meaning, Whereas Microsoft Proposes That the Claims Be Construed Contrary to the Canons of Claim Construction Set Down by the Federal Circuit**

**1. The Court Should Adopt Eolas' Proposed Claim Construction, Which Is Consistent With The Claims, The Specification And The File History**

**a. Construction of the Claim Term "Executable Application"**

<b>Eolas' Proposed Construction:</b>	Any application or program that can be executed (whether standalone or not).
<b>Microsoft's Proposed Construction:</b>	A standalone program which runs only in its own operating system ("OS") memory space or container (also called an "OS process").

A key part of the invention of the '906 patent is that when a computer user opens a Web page, a Web browser utilizing the invention will automatically launch any external program (i.e., external to the Web page) needed to process data interactively. In the claims of the '906 patent, the code for that external program is called an "executable application." The '906 patent does not include any limitations on the kind of code that can be an "executable application."

The starting point for all claim construction is the language of the asserted claim itself. See Bell Communications Research, Inc. v. Vitalink Communications Corp., 55 F.3d 615, 619-20 (Fed. Cir. 1995) (explaining that "[f]irst, and most importantly, the language of the claim defines the scope of the protected invention"). There is a "heavy presumption in favor of the ordinary meaning of claim language. . . ." Johnson Worldwide Assoc., Inc. v. Zebco Corp., 175 F.3d 985, 989 (Fed. Cir. 1999).

Here, the plain language of the claim calls for "an executable application" with two requirements. The executable application must: 1) be "external to the...hypermedia document" and 2) be "automatically invoke[d]" in order to allow display and interactive processing of the object.

Dated this 14<sup>th</sup> day of October, 2000

**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

By: 

Martin R. Lueck (MN Bar No. 155548)

Jan M. Conlin (MN Bar No. 192697)

Richard M. Martinez (MN Bar No. 225411)

Howard R. Orenstein (MN Bar No. 155809)

2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402-2015  
(612) 349-8500

AND

**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

Thomas B. Keegan (IL Bar No. 6196077)

Timothy M. Block (IL Bar No. 6215772)

Suite 400

55 West Wacker Drive

Chicago, IL 60601-1701

(312) 782-9200

**ATTORNEYS FOR PLAINTIFF  
EOLAS TECHNOLOGIES INCORPORATED**