

FILED

SEP 15 2004

U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
COMPUWARE CORPORATION,
a Michigan corporation,

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**RECEIVED**

SEP 13 2004

U.S. DISTRICT COURT
FLINT, MICHIGAN

Case No. 02-70906

v.

CASE A

INTERNATIONAL BUSINESS
MACHINES CORPORATION,
a New York corporation,

Hon. George Caram Steeh

Magistrate Judge Wallace Capel, Jr.

Defendant.

~~PROPOSED~~ ORDER REGARDING PLAINTIFF COMPUWARE CORPORATION'S
MOTION FOR DISCOVERY SANCTIONS

This matter having come before the Court on Plaintiff Compuware Corporation's Motion for Discovery Sanctions ("Plaintiff's Motion"), the Court having reviewed the briefing and other submissions of the parties on Plaintiff's motion regarding IBM's August 2004 production of pre-Version 1 File Manager source code, revision control data and executable beta code (collectively "File Manager pre-Version 1 code"), having heard oral argument on September 1, 2004, the Court, based upon the aforementioned and for the reasons stated on the record, finds the following:

IT IS HEREBY ORDERED:

Plaintiff's Motion is HEREBY GRANTED IN PART AND DENIED IN PART,
as follows:

1. Plaintiff's Motion is GRANTED to the extent that:
 - a. IBM shall pay to Compuware the reasonable costs incurred in bringing its motion in an amount to be determined by the Court based on supplemental declarations by the parties.
 - b. Discovery relating solely to the recently-produced File Manager pre-Version 1 code shall remain open until December 31, 2004. Compuware may take additional

reasonable depositions solely relating to that recently-produced File Manager pre-Version 1 code, and IBM shall reimburse Compuware for its reasonable costs for such additional depositions.

c. Compuware may submit supplemental expert reports relating to IBM's recently-produced File Manager pre-Version 1 code. IBM shall pay to Compuware the reasonable costs for Compuware's experts to analyze the recently-produced File Manager pre-Version 1 code, to submit any supplemental expert reports and to be deposed by IBM. IBM may submit expert reports responding to any supplemental reports submitted by Compuware.

d. The November 8, 2004, trial date is vacated. Trial will begin no earlier than February 2005, subject to Judge Steeh's calendar.

2. Plaintiff's Motion for default judgment relating to Compuware's First Claim for Relief for Copyright Infringement and Second Claim for Relief for Trade Secret Misappropriation is DENIED.

3. Plaintiff's Motion for preclusion of File Manager pre-Version 1 code or any evidence of the contents of the development thereof is DENIED. Plaintiff's request for a jury instruction relating to the absence of File Manager pre-Version 1 code is DENIED.

4. Plaintiff's Motion for an order enjoining the sale, licensing, marketing, installation or other distribution of IBM's File Manager is DENIED.

IT IS SO ORDERED.

September 15, 2004



United States Magistrate Judge
Wallace Capel, Jr.



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FROM: James P. Peltier

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SUBJECT: COMPUWARE V IBM

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FENWICK & WEST LLP