

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC**

**Before the Honorable Theodore R. Essex
Administrative Law Judge**

In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Investigation No. 337-TA-769

**COMPLAINANT MICROSOFT CORP.'S RESPONSES
TO THE COMMISSION INVESTIGATIVE STAFF'S HIGH PRIORITY
OBJECTIONS TO COMPLAINANT'S PROPOSED REBUTTAL EXHIBITS**

Complainant Microsoft Corp. ("Microsoft") herewith responds to the Commission Investigative Staff's ("Staff's") high priority objections to Microsoft's proposed rebuttal exhibits. Microsoft reiterates or clarifies its reasons for including some of the exhibits to which Staff objects. With respect to other exhibits, Microsoft submits that Staff's objections are without merit and should be overruled.

I. WRITTEN TESTIMONY

A. Expert Reports

As Staff indicates, Microsoft has already informed the ALJ that Microsoft does not intend to seek the admission of expert reports into evidence. Microsoft merely included its own expert reports on its exhibit list to facilitate citation to them in its prehearing brief. (*See* Microsoft Prehearing Brief at 32 n.2.) Microsoft included the expert report of Dr. Bresnahan (CRX-316C) for impeachment.

Microsoft does wish to correct Staff's identification of expert reports on Microsoft's rebuttal exhibit list. Staff incorrectly asserts that CRX-1 through CRX-21, CRX-064C through CRX-066, and CRX-316C are all expert reports. The expert reports are actually CRX-001,

CRX-005C, CRX-009C, CRX-011, CRX-13, CRX-014C, CRX-064C, and CRX-316C. The other exhibits listed by Staff are exhibits to these reports and are admissible under the Rule 210.37 and Your Honor's Ground Rules as they are reliable and are relevant and material to Microsoft's experts' qualifications and the bases for their opinions, as well as other issues in dispute, including Barnes & Noble's defense of patent misuse.

B. Deposition Designations

Staff's objections to CRX-299C through CRX-302C are without merit as Microsoft submitted designations of these transcripts in compliance with Ground Rule 8.1(k) and they are otherwise admissible pursuant to Rule 210.28(h)(2) as their testimony was offered in response to Microsoft's 30(b)(6) deposition notice. Microsoft is not seeking to admit these transcripts in their entirety.

Microsoft included CRX-053C and CRX-303C through CRX-306C on its exhibit list for impeachment purposes and does not plan to seek to admit these into evidence.

II. DISCOVERY REQUESTS AND RESPONSES

CRX-078 and CRX-307 contain Barnes & Noble's positions as to certain issues in dispute in this investigation and may be admissible to show those positions. Microsoft may also use these exhibits for impeachment.

III. DOCUMENTS NOT PRODUCED DURING DISCOVERY

As a result of the agreement between counsel for the private parties that is set forth in Microsoft's response to Barnes & Noble's High Priority Objection No. 5 and because this objection concerns a limited number of exhibits, Staff has withdrawn this objection.

IV. DEMONSTRATIVE AND PHYSICAL EXHIBITS

Though Staff reserves its right to object to Microsoft's proposed rebuttal demonstrative exhibits at a later date, any such objection by Staff would be untimely and should be overruled for that reason. With so little time remaining before the hearing, any untimely objection by Staff would prejudice Microsoft's preparation of its case.

V. DUPLICATE EXHIBITS

Microsoft is hopeful that the parties can reach agreement on a comprehensive set of joint exhibits before the commencement of the hearing that eliminate duplicate exhibits.

Dated: January 30, 2012

Respectfully submitted,

/s/ Rowan E. Morris

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMPLAINANT MICROSOFT CORP.'S RESPONSES TO THE COMMISSION INVESTIGATIVE STAFF'S HIGH PRIORITY OBJECTIONS TO COMPLAINANT'S PROPOSED REBUTTAL EXHIBITS (PUBLIC)** was served to the parties, in the manner indicated below, this 30th day of January 2012:

The Honorable James R. Holbein
Secretary
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☒ VIA ELECTRONIC FILING
☐ VIA HAND DELIVERY

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