

THE HONORABLE JAMES L. ROBERT

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,  
Plaintiff,

vs.

MOTOROLA, INC., et al.,  
Defendants.

MOTOROLA MOBILITY LLC, et al.,  
Plaintiffs,

vs.

MICROSOFT CORPORATION,  
Defendants.

Case No. C10-1823-JLR

PARTIES' JOINT SUBMISSION  
REGARDING TRIAL SCHEDULE

Plaintiff Microsoft Corporation (“Microsoft”), and defendants Motorola, Inc., Motorola Mobility LLC (formerly Motorola Mobility, Inc.) and General Instrument Corporation (“Motorola”), by and through their counsel below, hereby submit this Joint proposed schedule for fact and expert discovery, dispositive motions and trial on the remaining issues before the Court.

The parties anticipate that the Court will issue its decision from the November, 2012 bench trial (“Decision from the First Trial”) in the near future. The parties agree that,

1 following the Decision from the First Trial, an additional period of discovery is necessary on at  
2 least certain issues relating to Microsoft's claims. The parties further anticipate that additional  
3 summary judgment briefing may be warranted based on the Decision from the First Trial. The  
4 parties further note that, under the Court's dispositive motion cutoff rule, dispositive motions  
5 must be filed at least 120 days prior to the trial date. A party that seeks to modify this schedule  
6 must set forth "an extraordinary basis" for decreasing the period between the dispositive  
7 motion cutoff and the trial date to less than 120 days.

8 Accordingly, the parties propose the following approach to scheduling resolution of the  
9 remaining breach of contract issues:

- 10 • **Supplementation of Discovery Responses:** In accordance with Fed.R.Civ.P.  
11 26(e), the parties will supplement their responses to any discovery requests  
12 relevant to Microsoft's claims.
  - 13 ○ **Motorola's position:** As Microsoft is the plaintiff seeking damages it is  
14 incumbent upon Microsoft to supplement immediately its discovery  
15 responses and not wait for the Decision from the First Trial.
  - 16 ○ **Microsoft's position:** The parties should supplement by no later than  
17 20 days after the Decision from the First Trial. If the Court determines  
18 that immediate supplementation is warranted, Microsoft believes it  
19 would be appropriate for both parties to supplement at the same time.
- 20 • **Close of Fact Discovery:**
  - 21 ○ **Motorola's position:** Fact discovery closed as of July 18, 2012. With  
22 respect to fact discovery as to remaining issues, there should be no  
23 additional limitations on discovery, and fact discovery should close 45  
24 days after the Decision from the First Trial. Motorola agrees to serve  
25 fact discovery identifying all issues within ten (10) days after the  
Decision from the First Trial.

1           ○ **Microsoft's position:** Fact discovery as to liability closed as of July 18,  
2           2012. Microsoft does not believe that there exist any remaining issues  
3           other than damage issues and has requested that Motorola identify any  
4           remaining non-damages issues. Motorola has not identified any such  
5           issues. Accordingly, Microsoft believes no additional fact depositions  
6           are necessary and fact discovery should close 40 days after the Decision  
7           from the First Trial.

8           • **Exchange of Opening Expert Reports:** 45 days after the Decision from the  
9           First Trial.

10          • **Exchange of Rebuttal Expert Reports:** 65 days after the Decision from the  
11          First Trial.

12          • **Close of Expert Discovery:** 80 days after the Decision from the First Trial  
13          (any expert offered for testimony at trial shall be subject to deposition,  
14          regardless of whether a new expert report has been submitted).

15          • **Dispositive Motions:**

16           ○ **Microsoft's Position:** If the Court permits the filing of dispositive  
17           motions, Microsoft requests an expedited briefing schedule that would  
18           allow for an early trial date in August 2013. Microsoft requests that, at  
19           the status conference scheduled for March 14, 2013, Motorola identify  
20           any pre-trial motions it anticipates filing other than summary judgment,  
21           Daubert, or motions *in limine*.

22           ○ **Motorola's Position:** On or before Monday, May 20, 2013, the parties  
23           will notify the Court whether they anticipate dispositive motions or other  
24           significant pre-trial motions, and further the parties will notify the Court  
25           regarding the types of pre-trial motions each anticipates. Motorola  
          expects that there will be significant motion practice and believes the

Court's 120-day rule is appropriate. Thereafter, there will be a Status Conference to determine the trial date. If dispositive motions are filed, opening motions will be due on the later of 90 days after the Decision from the First Trial and Thursday, June 13, 2013.

• **Trial Date:**

- **Motorola's position:** The trial should occur between September 23 to October 25, 2012, if the Court is available, to allow time for dispositive motions and to accommodate counsel's schedule.
- **Microsoft's position:** Microsoft requests that trial be scheduled between August 5 and August 20, 2013.
- Otherwise, the parties agree that trial should be scheduled to begin on Monday, November 11, 2013, or as soon thereafter as the Court's schedule permits.

- **Length of Trial:** The parties anticipate that the time required for trial will depend on the Court's ruling on Microsoft's pending Motion to Confirm Bench Trial of Breach of Contract Issues, filed on March 8, 2013. The parties expect that a bench trial would require 4 total trial days and a jury trial would require 7 total trial days. The parties agree that, in either case, time will be divided evenly between the parties.

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1 DATED this 13<sup>th</sup> day of March, 2013.

2 **RESPECTFULLY SUBMITTED,**  
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**CERTIFICATE OF SERVICE**

I, Susie Clifford, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 13<sup>th</sup> day of March, 2013, I caused the preceding document to be served on counsel of record in the following manner:

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