

HONORABLE JAMES L. ROBERT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA INC., et al.,

Defendant.

No. C10-1823-JLR

MICROSOFT'S SECOND NOTICE OF
SUPPLEMENTAL AUTHORITY
REGARDING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

1 Microsoft respectfully submits as additional supplemental authority in support of its
2 Opposition (Dkt. No. 740) to Defendants’ Motion for Summary Judgment (Dkt. No. 733) the
3 United States Trade Representative’s August 3, 2013 Disapproval of the U.S. International
4 Trade Commission’s Determination in ITC Investigation No. 337-TA-794, attached as Exhibit
5 1.

6 The ITC’s determination in the 794 Investigation involving Samsung and Apple was
7 submitted by Motorola as supplemental authority in support of its summary judgment motion
8 on July 11, 2013. (See Dkt. No. 738.) Motorola stated that the ITC had rejected the argument
9 “that an exclusion order should be unavailable for a standard essential patent” and directed the
10 Court to a particular passage of the determination “finding that Samsung is entitled to an
11 exclusionary remedy because 19 U.S.C. §§ 1337(a)(1)(B) allows the Commission to issue
12 exclusionary orders for any patent, regardless of whether it is an SEP.” (Id. at 1.)

13 The ITC’s exclusion order on SEPs has been overruled. Acting on the authority of the
14 President to “disapprove an order[of the ITC] on policy grounds,” Ex. 1 at 1, the U.S. Trade
15 Representative states: “I have decided to disapprove the USITC’s determination to issue an
16 exclusion order and cease and desist order in this investigation.” Ex. 1 at 3. The exclusion
17 order on SEPs that was the subject of Motorola’s prior submission, as well as its briefing and
18 argument at the July 31, 2013 hearing, will not go into effect.

19 DATED this 3rd day of August, 2013.

20 CALFO HARRIGAN LEYH & EAKES LLP

21
22 By s/Arthur W. Harrigan, Jr.
23 Arthur W. Harrigan, Jr., WSBA #1751

24 By s/Christopher Wion
25 Christopher Wion, WSBA #33207

26 By s/Shane P. Cramer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Shane P. Cramer, WSBA #35099
999 Third Avenue, Suite 4400
Seattle, WA 98104
Phone: 206-623-1700
arthurh@calfoharrigan.com
chrisw@calfoharrigan.com
shanec@calfoharrigan.com

By s/T. Andrew Culbert
T. Andrew Culbert

By s/David E. Killough
David E. Killough

MICROSOFT CORPORATION
1 Microsoft Way
Redmond, WA 98052
Phone: 425-882-8080
Fax: 425-869-1327

David T. Pritikin
Richard A. Cederoth
Constantine L. Trela, Jr.
William H. Baumgartner, Jr.
Ellen S. Robbins
Douglas I. Lewis
David C. Giardina
John W. McBride
Nathaniel C. Love

SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
Phone: 312-853-7000
Fax: 312-853-7036

Carter G. Phillips
Brian R. Nester

SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
Telephone: 202-736-8000
Fax: 202-736-8711

Counsel for Microsoft Corp.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I, Nathaniel Love, 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 3rd day of August, 2013, I caused the preceding document to be served on counsel of record in the following manner:

Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:

Ralph Palumbo, WSBA #04751
 Philip S. McCune, WSBA #21081 _____ Messenger
 Lynn M. Engel, WSBA #21934 _____ US Mail
 Summit Law Group _____ Facsimile
 315 Fifth Ave. South, Suite 1000 _____ X ECF
 Seattle, WA 98104-2682
 Telephone: 206-676-7000
 Email: Summit1823@summitlaw.com

Steven Pepe (*pro hac vice*) _____ Messenger
 Jesse J. Jenner (*pro hac vice*) _____ US Mail
 Ropes & Gray LLP _____ Facsimile
 1211 Avenue of the Americas _____ X ECF
 New York, NY 10036-8704
 Telephone: (212) 596-9046
 Email: steven.pepe@ropesgray.com
 Email: jesse.jenner@ropesgray.com

Norman H. Beamer (*pro hac vice*) _____ Messenger
 Ropes & Gray LLP _____ US Mail
 1900 University Avenue, 6th Floor _____ Facsimile
 East Palo Alto, CA 94303-2284 _____ X ECF
 Telephone: (650) 617-4030
 Email: norman.beamer@ropesgray.com

1 Paul M. Schoenhard (*pro hac vice*)
Ropes & Gray LLP
2 One Metro Center
700 12th Street NW, Suite 900
3 Washington, DC 20005-3948
Telephone: (202) 508-4693
4 Email: Paul.schoenhard@ropesgray.com

____ Messenger
____ US Mail
____ Facsimile
 X ECF

5 Andrea Pallios Roberts (*pro hac vice*)
6 Brian C. Cannon (*pro hac vice*)
7 Quinn Emanuel Urquhart & Sullivan, LLP
555 Twin Dolphin Drive, 5th Floor
8 Redwood Shores, CA 94065
Telephone: (650) 801-5000
9 Email: andreaproberts@quinnemanuel.com
10 Email: briancannon@quinnemanuel.com

____ Messenger
____ US Mail
____ Facsimile
 X ECF

11 Kathleen M. Sullivan (*pro hac vice*)
12 David Elihu (*pro hac vice*)
13 Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
14 New York, NY 10010
Telephone: (212) 849-7000
15 Email: kathleensullivan@quinnemanuel.com

____ Messenger
____ US Mail
____ Facsimile
 X ECF

16 William Price (*pro hac vice*)
17 Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figuera St., 10th Floor
18 Los Angeles, CA 90017
Telephone: (212) 443-3000
19 Email: williamprice@quinnemanuel.com
20 MicrosoftvMotoBreachofRANDCase@quinnemanuel.com

____ Messenger
____ US Mail
____ Facsimile
 X ECF

21 DATED this 3rd day of August, 2013.

22
23 s/ Nathaniel Love _____
NATHANIEL LOVE
24
25
26