

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s): 12-35352

District Court/Agency Case Number(s): 2:10-cv-01823-JLR

District Court/Agency Location: Seattle, Washington (W.D. Wash.)

Case Name: Microsoft Corp. v. Motorola, Inc., et al.

If District Court, docket entry number(s) of order(s) appealed from: Docket Nos. 261, 277

Name of party/parties submitting this form: Motorola Mobility, Inc.

**Please briefly describe the dispute that gave rise to this lawsuit.**

Microsoft sued Motorola in November 2010 in the Western District of Washington for allegedly failing to license Motorola's patents to Microsoft at reasonable and nondiscriminatory ("RAND") rates as required by Motorola's assurance to a non-governmental, standard-setting organization as to its standard-essential patents. Microsoft seeks a declaration that Motorola has breached its contract with the standard-setting organization and seeks declaratory and injunctive relief and damages. Separately, Motorola sued Microsoft in Germany in July 2011 for infringing Motorola's German patents. In March 2012, Microsoft moved in the district court to enjoin Motorola from enforcing an anticipated German court judgment. The district court granted the motion on April 12, 2012. On May 2, 2012, the German court found infringement and issued an order that would enjoin further infringing use in Germany.

**Briefly describe the result below and the main issues on appeal.**

This is an interlocutory appeal from the district court's order of April 12, 2012, granting Microsoft a preliminary injunction barring Motorola from enforcing the German court's judgment, which entitles Motorola to an injunction blocking Microsoft's continuing infringement of German patents within Germany. The district court held that the German proceedings might interfere with the proceedings in the Western District of Washington, even though Motorola obtained the German judgment under German law with respect to infringement in Germany of German patents. On appeal, Motorola will contend that the district court erred as a matter of law in entering this anti-suit injunction and that the injunction poses undue affront to comity and proper respect for the distinct sovereign function of the German court.

*(Please continue to next page)*

**Describe any proceedings remaining below or any related proceedings in other tribunals.**

Because this appeal is from a preliminary injunction, the merits of the underlying dispute remain in the district court. The district court is currently deciding a motion for partial summary judgment. Trial is scheduled to commence on Monday, November 19, 2012. In addition, patent infringement claims by Motorola against Microsoft remain pending in a related case consolidated into the district court docket.

**Provide any other thoughts you would like to bring to the attention of the mediator.**

Motorola Mobility, Inc., does not believe the instant dispute is susceptible to resolution through mediation given the pronounced differences between the parties on the purely legal question of whether a U.S. district court may properly enjoin enforcement of the judgment of another nation's court, and the time-sensitivity of Motorola's desire to have its appeal heard expeditiously so that it can enforce its German judgment at the earliest opportunity.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at [ca09\\_mediation@ca9.uscourts.gov](mailto:ca09_mediation@ca9.uscourts.gov). Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

**CERTIFICATION OF COUNSEL**

I certify that:

☒ a current service list with telephone and fax numbers and email addresses is attached (see 9th Circuit Rule 3-2).

☒ I understand that failure to provide the Court with a completed form and service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

**Note:** Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

## **SERVICE LIST**

Kathleen M. Sullivan  
QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Phone: 212-849-7000  
Fax: 212-849-7100  
Email: kathleensullivan@quinnemanuel.com

Derek L. Shaffer  
QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
1299 Pennsylvania Avenue, NW  
Suite 825  
Washington, DC 20004  
Phone: 202-538-8000  
Fax: 202-538-8100  
Email: derekshaffer@quinnemanuel.com

Arthur W. Harrigan, Jr.  
DANIELSON HARRIGAN  
LEYH & TOLLEFSON  
999 3rd Avenue  
Suite 4400  
Seattle, WA 98104  
Phone: 206-623-1700  
Fax: 206-623-8717  
Email: arthurh@dhlt.com

Brian R. Nester  
SIDLEY AUSTIN (DC)  
1501 K Street NW  
Washington, DC 20005  
Phone: 202-736-8017  
Fax: 202-736-8711  
Email: bnester@sidley.com

Carter G. Phillips  
SIDLEY AUSTIN (DC)  
1501 K Street NW  
Washington, DC 20005  
Phone: 202-736-8000  
Fax: 202-736-8711  
Email: cphillips@sidley.com

Christopher T. Wion  
DANIELSON HARRIGAN  
LEYH & TOLLEFSON  
999 3rd Avenue  
Suite 4400  
Seattle, WA 98104  
Phone: 206-623-1700  
Fax: 206-623-8717  
Email: chrisw@dhl.com

Constantine L. Trela, Jr.  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: ctrela@sidley.com

David C. Giardina  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: dgiardina@sidley.com

David Greenfield  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: david.greenfield@sidley.com

David E. Killough  
MICROSOFT CORP.  
One Microsoft Way  
Redmond, WA 98052  
Phone: 425-703-8865  
Fax: 425-869-1327  
Email: davkill@microsoft.com

David T Pritikin  
SIDLEY AUSTIN (IL)  
One South Dearborn Street

Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: dpkritikin@sidley.com

Douglas I. Lewis  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7036  
Fax: 312-853-7036  
Email: dilewis@sidley.com

Ellen S. Robbins  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: erobbins@sidley.com

John W. McBride  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: jwmcbride@sidley.com

Nathaniel C. Love  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: nlove@sidley.com

Richard A. Cederoth  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: rcederoth@sidley.com

T. Andrew Culbert

MICROSOFT CORP.  
One Microsoft Way  
REDMOND, WA 98052  
Phone: 425-706-6921  
Fax: 425-869-1327  
Email: andycu@microsoft.com

William H. Baumgartner , Jr.  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: wbaumgartner@sidley.com

Shane P. Cramer  
DANIELSON HARRIGAN  
LEYH & TOLLEFSON  
999 3rd Avenue  
Suite 4400  
Seattle, WA 98104  
Phone: 206-623-1700  
Fax: 206-623-8717  
Email: shanec@dhlt.com

Gabrielle Elizabeth Higgins  
ROPES & GRAY LLP (CA)  
1900 University Avenue  
6th Floor  
East Palo Alto, CA 94393-2284  
Phone: 650-617-4015  
Fax: 650-617-4090  
Email: gabrielle.higgins@ropesgray.com

Jesse J. Jenner  
ROPES & GRAY LLP (NY)  
1211 Avenue of the Americas  
35th Floor  
New York, NY 10036  
Phone: 212-596-9046  
Fax: 212-596-9090  
Email: jesse.jenner@ropesgray.com

Lynn M. Engel  
SUMMIT LAW GROUP  
315 Fifth Avenue S

Suite 1000  
Seattle, WA 98104-2682  
Phone: 206-676-7000  
Fax: 206-676-7001  
Email: lynne@summitlaw.com

Mark D. Rowland  
ROPES & GRAY LLP (CA)  
1900 University Avenue  
6th Floor  
East Palo Alto, CA 94393-2284  
Phone: 650-617-4016  
Fax: 650-617-4090  
Email: mark.rowland@ropesgray.com

Norman H. Beamer  
ROPES & GRAY LLP (CA)  
1900 University Avenue  
6th Floor  
East Palo Alto, CA 94393-2284  
Phone: 650-617-4030  
Fax: 650-617-4090  
Email: norman.beamer@ropesgray.com

Paul M. Schoenhard  
ROPES & GRAY (DC)  
700 12th Street NW  
Suite 900  
Washington, DC 20005  
202-508-4693  
Email: paul.schoenhard@ropesgray.com

Philip S. McCune  
SUMMIT LAW GROUP  
315 5th Avenue S  
Suite 1000  
Seattle, WA 98104  
Phone: 206-676-7000  
Fax: 206-676-7001  
Email: philm@summitlaw.com

Ralph H. Palumbo  
SUMMIT LAW GROUP  
315 Fifth Avenue S  
Suite 1000  
Seattle, WA 98104-2682

Phone: 206-676-7000  
Fax: 206-676-7001  
Email: [ralphp@summitlaw.com](mailto:ralphp@summitlaw.com)

Stephen Pepe  
ROPES & GRAY LLP (NY)  
1211 Avenue of the Americas  
35th Floor  
New York, NY 10036  
Phone: 212-596-9046  
Fax: 212-596-9090  
Email: [stephen.pepe@ropesgray.com](mailto:stephen.pepe@ropesgray.com)

Kevin J. Post  
ROPES & GRAY (DC)  
700 12th Street NW  
Suite 900  
Washington, DC 20005  
Phone: 202-508-4600  
Fax: 202-508-4650  
Email: [Kevin.Post@ropesgray.com](mailto:Kevin.Post@ropesgray.com)

Stuart W. Yothers  
ROPES & GRAY LLP (NY)  
1211 Avenue of the Americas  
35th Floor  
New York, NY 10036  
Phone: 212-596-9000  
Fax: 212-596-9090  
Email: [Stuart.Yothers@ropesgray.com](mailto:Stuart.Yothers@ropesgray.com)

David T. Pritikin  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: [dpritikin@sidley.com](mailto:dpritikin@sidley.com)

John W. McBride  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: [jwmcbride@sidley.com](mailto:jwmcbride@sidley.com)



Richard A. Cederoth  
SIDLEY AUSTIN (IL)  
One South Dearborn Street  
Chicago, IL 60603  
Phone: 312-853-7000  
Fax: 312-853-7036  
Email: [rcederoth@sidley.com](mailto:rcederoth@sidley.com)