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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARTIN GARDNER REIFFIN,
Plaintiff,

No C 98-0266 VRW

v

ORDER

MICROSOFT CORPORATION,
Defendant.

_____ /

After the court entered the parties' stipulated final judgment on May 5, 2010, Doc #604, defendant Microsoft Corporation, on May 11, filed a motion for attorney fees pursuant to 35 USC § 285. Doc #606. The parties also have filed notices of appeal and cross-appeal. See Docs #600, 605, 609, 621. In opposition to Microsoft's motion for fees, plaintiff argues that this court should "hold this motion in abeyance pending" appeal, since if judgment were reversed the motion would be rendered moot. Doc #617 at 5. Microsoft does not seem to address this suggestion in reply. See Doc #623.

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1 The advisory committee note to the 1993 amendments to
2 FRCP 54(d) provide: "If an appeal of the merits of the case is
3 taken, the court may rule on the claim for fees, may defer its
4 ruling on the motion, or may deny the motion without prejudice,
5 directing * * * a new period for filing after the appeal has been
6 resolved." See also, for example, Tancredi v Metropolitan Life Ins
7 Co, 378 F3d 220, 223, 225-26 (2d Cir 2004). Whether to proceed
8 with Microsoft's motion forthwith or to defer pending appeal
9 therefore is a matter committed to the court's discretion.

10 The court finds that deferring its ruling on Microsoft's
11 motion is the efficient course, as disposition at this juncture
12 could result either in wasted or duplicated effort. Therefore,
13 consistent with FRCP 54(d), adjudication of Microsoft's motion for
14 attorney fees is hereby DEFERRED. The clerk is DIRECTED to
15 terminate Microsoft's motion for attorney fees, Doc #606, as an
16 administrative matter. Microsoft may re-notice its motion within
17 sixty (60) days of issuance of appellate mandate, in which event
18 the parties may submit further briefing to the extent necessary in
19 light of the disposition of the issues on appeal.

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IT IS SO ORDERED.



VAUGHN R WALKER
United States District Chief Judge