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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DATEL HOLDINGS LTD. and DATEL
DESIGN & DEVELOPMENT, INC.,

Plaintiffs and
Counterclaimant
Defendants,

vs.

MICROSOFT CORPORATION,

Defendant and
Counterclaimant.

CASE NO. CV 09-5535 EDL

**[PROPOSED] AMENDMENT TO CASE
MANAGEMENT AND PRETRIAL ORDER
FOR JURY TRIAL**

WHEREAS, on September 22, 2010, the Court entered a Case Management and
Pretrial Order for Jury Trial;

WHEREAS, on May 6, 2011, the Court granted leave to Microsoft Corporation to
file its Second Amended Answer and Counterclaims;

WHEREAS, at the hearing on May 6, 2011, the Court tentatively set a new trial
date of January 31, 2012;

WHEREAS, at the hearing on May 6, 2011, the Court ordered the parties to meet
and confer and to submit to the extent possible an agreed-upon Amendment to Case Management
and Pretrial Order for Jury Trial;

1 WHEREAS, the parties jointly submit this [Proposed] Amendment to Case
2 Management and Pretrial Order for Jury Trial, subject to the approval of the Court;

3 WHEREAS, the parties have exchanged informal lists of document requests
4 regarding Microsoft's new claims and defenses and Datel's defenses thereto; and

5 WHEREAS, the parties believe that with good faith negotiation to narrow the
6 requests, it will be possible to produce responsive documents by June 30, 2011,

7 IT IS HEREBY ORDERED THAT the Case Management and Pretrial Order for
8 Jury Trial entered on September 22, 2010, is amended in the following respects and, except as
9 amended, remains in effect:

10 1. TRIAL DATE

11 a. Datel proposes that trial begin on April 10, 2012, at 8:30 a.m. Microsoft
12 proposes that trial begin on April 17, 2012, at 8:30 a.m., or on such other date as is convenient for
13 the Court. Having considered the parties' positions and proposed pretrial schedule and the
14 Court's own schedule, the Court sets trial to commence on May 7, 2012, at 8:30 a.m. If an earlier
15 trial date in April 2011 becomes available, the Court will consider advancing the trial.

16 2. DISCOVERY

17 a. Non-expert discovery is reopened only as to Microsoft's new claims and
18 defenses and Datel's defenses thereto. Such non-expert discovery shall be completed no later
19 than August 19, 2011.

20 b. The parties shall make their best efforts to produce documents responsive
21 to the informal document requests they have exchanged, after narrowing the requests through
22 good faith negotiations, by June 30, 2011, and shall meet and confer about any documents that
23 cannot be produced by that time.

24 c. Rebuttal reports from design patent expert witnesses, antitrust liability
25 expert witnesses, and technical experts (including Datel's rebuttal to Mr. Reiss), except to the
26 extent such reports will address the newly-asserted claims or the FCC issues, shall be served no
27 later than May 27, 2011. Rebuttal report(s) from Datel's FCC expert(s) shall be served no later
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1 than June 28, 2011. Microsoft's FCC expert has already served his report. Should Microsoft
2 wish to file a responsive report to Datel's FCC expert(s)' report(s), it should do so promptly and
3 in no event later than July 15, 2011. Discovery of design patent experts, antitrust liability experts,
4 and technical experts shall be completed no later than June 27, 2011. Discovery of FCC experts
5 shall be completed no later than July 22, 2011.

6 d. Any additional initial expert disclosures regarding the newly-asserted
7 claims and defenses and defenses thereto shall be served no later than September 1, 2011.
8 Rebuttal expert disclosures shall be served no later than September 30, 2011, on the newly-
9 asserted claims and defenses and defenses thereto and on damages issues. All expert discovery
10 on the newly-asserted claims and defenses and defenses thereto, and on damages shall be
11 completed no later than October 21, 2011.

12 e. Initial disclosures pursuant to Rule 26(e)(1) of the Federal Rules of Civil
13 Procedure shall be made regarding the newly-asserted claims and defenses and defenses thereto
14 by no later than May 23, 2011.

15 f. Microsoft shall disclose, in accordance with Code of Civil Procedure §
16 2019.210, the trade secrets it contends were misappropriated by no later than May 31, 2011.

17 g. The parties shall meet and confer regarding the extent to which, if any,
18 additional written discovery or time for depositions is appropriate and necessary and shall advise
19 the Court of their agreement, or their respective positions if they cannot agree.

20 3. MOTIONS

21 a. Datel requests that it be permitted to bring motions in three rounds, each of
22 which is described below. Datel believes that an early round of summary judgment hearings will
23 streamline the case and notes that there have been no expert reports submitted by the parties on
24 the trademark claims and that all expert reports regarding the DMCA claims will have been
25 exchanged prior to the proposed filing date. Microsoft requests that there be only two rounds of
26 motion and that the first round proposed by Datel, which Microsoft believes is too early, be
27 eliminated, including because it comes before expert depositions on the trademark and DMCA
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1 issues will be concluded and because Microsoft's DMCA motions will be brought in the second
2 round. Having considered the parties' positions, the Court will permit three rounds of dispositive
3 motions as follows:

4 b. If the Court permits a first round of dispositive motions as proposed by
5 Datel, Datel expects to file a motion for summary judgment or partial summary judgment
6 regarding the trademark and DMCA counterclaims. Microsoft does not intend to file any motions
7 in this round. Dispositive motions that Datel wishes to file in the first round, if permitted by the
8 Court, shall be served and filed no later than June 3, 2011. Any opposition to these motions shall
9 be served and filed no later than July 1, 2011. Any replies to the oppositions shall be served and
10 filed no later than July 15, 2011. The hearing on the first round of dispositive motions is set for
11 Wednesday, August 10, 2011, at 9:30 a.m.

12 c. If the Court permits a first or second round of dispositive motions as
13 proposed by Microsoft and Datel, respectively, Datel expects to file the motion it would file in the
14 first round (above) if that first round is not permitted and also to file motions regarding the design
15 patent defense and interference counterclaim, and Microsoft expects to file motions for summary
16 judgment or partial summary judgment addressing antitrust liability, market definition, DMCA
17 liability, and design patent defenses. Dispositive motions that the parties wish to file in this first
18 or second round shall be served and filed no later than August 8, 2011. Any opposition to these
19 motions shall be served and filed no later than August 29, 2011. Any replies to the oppositions
20 shall be served and filed no later than September 19, 2011. The hearing on the second round of
21 dispositive motions is set for Friday, October 14, 2011, at 9:30 a.m.

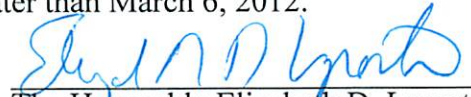
22 d. If the Court permits a second or third round of dispositive motions as
23 proposed by Microsoft and Datel, respectively, Datel expects to file motions regarding the
24 copyright and trade secret counterclaims and the FCC issue, and Microsoft expects to file motions
25 for summary judgment or partial summary judgment addressing causation and damages,
26 copyright, trade secret, FCC and other newly-asserted claims. Dispositive motions that the
27 parties wish to file in this second or third round shall be served and filed no later than November
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1 4, 2011. Any opposition to these motions shall be served and filed no later than November 28,
2 2011. Any replies to the oppositions shall be served and filed no later than December 16, 2011.
3 The hearing on the third round of dispositive motions is set for Thursday, January 5, 2011, at 9:30
4 a.m.

5 4. PRETRIAL CONFERENCE

6 a. A pretrial conference shall be held on Wednesday, March 28, 2012, at 2:00
7 p.m., in Courtroom E, 15th Floor. Lead counsel shall meet and confer no later than January 20,
8 2012, to address the issues set forth in the Court's original Case Management and Pretrial Order
9 for Jury Trial. Pretrial submissions, including motions in limine, shall be filed no later than
10 February 14, 2012. Responses and oppositions to these pretrial filings, including oppositions to
11 any motions in limine, shall be served and filed no later than March 6, 2012.

12 DATED: June 2, 2011


The Honorable Elizabeth D. Laporte
United States Magistrate Judge

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15 Approved as to form:

16 MUNGER, TOLLES & OLSON LLP

17
18 By: /s/ Gregory P. Stone
19 Gregory P. Stone
20 Attorneys for Defendant and
21 Counterclaimant
Microsoft Corporation

22 HOWARD RICE NEMEROVSKI CANADY
23 FALK & RABKIN PC

24 By: /s/ Daniel B. Asimow
25 Daniel B. Asimow
26 Attorneys for Plaintiffs and
27 Counterclaimant Defendants
28 Datel Holdings Ltd., et al.