

Honorable Steven Gonzalez
Hearing Date: July 27, 2005 at 1:00 p.m.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MICROSOFT CORPORATION,
a Washington Corporation,

Plaintiff,

v.

KAI-FU LEE and GOOGLE INC., a
Delaware Corporation,

Defendants.

No. 05-2-23561-6 SEA

MICROSOFT'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE

MOTION FOR TEMPORARY
RESTRAINING ORDER.

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I. INTRODUCTION AND RELIEF REQUESTED

1 Dr. Kai-Fu Lee -- with Google's encouragement -- is blatantly violating his non-
2 competition promises to Microsoft. He is doing so by defecting Microsoft for Google, a direct
3 competitor in markets as to which Dr. Lee holds Microsoft's most sensitive technical and
4 strategic information. The non-compete provisions Microsoft seeks to enforce are narrowly
5 drawn and were agreed to by Dr. Lee as a condition of his return to Redmond as a Microsoft
6 Vice President, a position for which he was paid over a million dollars last year alone.

7 For the last five years, Dr. Lee has held leadership positions with respect to Microsoft's
8 efforts to develop new and improved search engine technologies. Microsoft is engaged in
9 intense competition with Google in the market for these products. By virtue of his leadership
10 roles, Dr. Lee learned Microsoft's most sensitive technical and strategic business secrets about
11 search technologies. Throughout this time he was also deeply involved in Microsoft's efforts
12 to expand its business in China and learned Microsoft's confidential strategic plans regarding
13 that crucial new market.

14 Dr. Lee decided to defect Microsoft for Google in order to lead Google's new China
15 operation developing search technology. This places him in direct competition with Microsoft
16 on two issues -- search engines and China strategy -- where Dr. Lee holds Microsoft's most
17 proprietary, confidential, and competitively sensitive information. This is a clear violation of
18 the non-compete provisions of Dr. Lee's Employment Agreement. Microsoft is therefore
19 compelled to seek a Temporary Restraining Order to prevent the actual and substantial injury
20 that will result if Dr. Lee is allowed to violate his non-competition promises.

II. FACTS AND PROCEDURAL HISTORY

22 **A. Dr. Lee Agreed to a Narrowly Drawn Non-Compete as a Condition of His**
23 **Employment and Promotion.**

24 In August 2000, after two years managing Microsoft's Chinese Research facility, Dr.
25 Lee was rehired by Microsoft at Microsoft's Redmond, Washington campus and promoted to

1 Vice President of the Natural Interactive Services Division.¹ Dr. Lee moved back to the
2 United States, establishing and maintaining his residence in the Redmond area, where he still
3 owns his residence.²

4 As a condition of his return to Microsoft as Vice President, Dr. Lee executed an
5 Employee Agreement with Microsoft. Dr. Lee signed this Employee Agreement on August 8,
6 2000, and his signature was acknowledged by a Microsoft witness.³ This contract contained
7 confidentiality and non-competition provisions. In particular, Paragraph 9 of the Agreement
8 provides, in relevant part:

9 **9. Non-Competition and Non-Solicitation.** While employed at Microsoft
10 **and for a period of one year thereafter, I will not (a) accept employment or**
11 **engage in activities competitive with products, services or projects (including**
12 **actual or demonstrably anticipated research or development) on which I**
13 **worked or about which I learned confidential or proprietary information or**
14 **trade secrets while employed at Microsoft; (b) render services to any client or**
15 **customer of Microsoft for which I performed services during the twelve months**
16 **prior to leaving Microsoft's employ; (c) induce, attempt to induce, or assist**
17 **another to induce or attempt to induce any person to terminate his employment**
18 **with Microsoft or to work for me or for any other person or entity. If during or**
19 **after my employment with Microsoft I seek work elsewhere, I will provide a**
20 **copy of this Agreement to any persons or entities by whom I am seeking to be**
21 **hired before accepting employment with or engagement by them.**

22 In addition, in Paragraph 12 of the Agreement, Dr. Lee agreed that injunctive relief is the
23 appropriate remedy for breach of this provision.

24 Dr. Lee is well aware of these non-competition provisions of his Employee Agreement.
25 He personally signed and acknowledged these provisions on at least three separate occasions.⁴
Without such promises, Microsoft never would have hired Dr. Lee, nor would it have given
him access to its highest levels of confidential information. Dr. Lee was well paid in exchange
for these promises. He has received over well over \$3 Million in total compensation since he
returned to Microsoft in August of 2000, including more than \$1 Million in 2004 alone.⁵

¹ Declaration of Marla Mellies ("Mellies Decl."), ¶¶ 3-7 and Exs. A-D.

² Mellies Decl., ¶ 9.

³ Mellies Decl., Ex. F.

⁴ Mellies Decl., Exs. B, C, and F.

⁵ Mellies Decl., ¶ 8.

1 **B. Dr. Lee Was Intimately Involved in Microsoft's Efforts to Develop New and**
2 **Improved Search Technologies and Products to Compete Directly with Google.**

3 As Vice President in Microsoft's Natural Interactive Services Division, one of Dr.
4 Lee's primary responsibilities was to lead Microsoft's efforts in developing new search engine
5 technologies for MSN. MSN's search related advertising provides hundreds of millions of
6 dollars in revenue to Microsoft each year.⁶ One of Microsoft's largest competitors for these
7 revenues is Google, which directly competes with Microsoft in the search engine market. As
8 Google admits: "We consider our primary competitors to be Microsoft Corporation and
9 Yahoo! Inc."⁷

10 Until his resignation, Dr. Lee managed technical teams working on key future
11 technology for MSN Search as well as other Microsoft products.⁸ At one point Dr. Lee was
12 even in charge of Microsoft's overall business efforts for MSN Search.⁹ Many of the
13 technological developments managed by Dr. Lee are integral to Microsoft's future innovation
14 in this area.¹⁰ These innovations include: (1) highly confidential improvements in natural
15 language processing that will enable new and innovative ways to improve search results, (2)
16 highly confidential innovations in speech research that will ultimately improve MSN's ability
17 to search for audio and video files; and (3) highly confidential new and innovative search
18 technologies using machine learning concepts.¹¹ Dr. Lee is intimately familiar with the
19 software architecture, source code, and algorithmic structure for the current MSN search
20 engine, as well as these new innovative search technologies. He also is intimately familiar
21 with Microsoft's strategic business plans to market and monetize search products.¹²

22 In addition, MSN distributes the Windows Desktop Search engine that allows users to
23 search the files on their desktop computers.¹³ This product competes directly with Google's

24 ⁶ Declaration of Christopher Payne ("Payne Decl."), ¶ 2.

25 ⁷ Declaration of Jeffrey Johnson ("Johnson Decl."), Ex. D at 30 (Google Inc.'s SEC 10-Q filing from May 16, 2005).

⁸ Payne Decl., ¶ 3.

⁹ Payne Decl., ¶ 4

¹⁰ Payne Decl., ¶ 3.

¹¹ *Id.*, see also Declaration of Sin Lew ("Lew Decl."), ¶ 2-3.

¹² Payne Decl., ¶ 4; Lew Decl., ¶¶ 3-4.

¹³ Declaration of David Dawson ("Dawson Decl."), ¶ 2.

1 desktop search application.¹⁴ The Windows Desktop Search engine was developed in
2 conjunction with Dr. Lee's group, and Dr. Lee is familiar with confidential and proprietary
3 aspects of the product including its architecture, source code and algorithmic structure as well
4 as highly confidential plans for future innovations.¹⁵

5 **C. Dr. Lee Was Intimately Involved in Microsoft's Efforts to Expand its Presence in
6 China.**

7 In addition to his leadership role with respect to search technologies, Dr. Lee was one
8 of the lead executives in charge of developing and implementing Microsoft's business
9 strategies with respect to China. For instance, Dr. Lee was an active member of the China
10 Redmond Advisory Board (the "CRAB"), an executive committee at Microsoft that reviews
11 the company's most important plans for the China market in highly confidential meetings.¹⁶
12 At these meetings, the board reviews detailed and confidential information regarding
13 Microsoft's present initiatives and expenditures in China, relations with the Chinese
14 government, private investment strategies, and Chinese companies targeted for acquisition.¹⁷

15 Dr. Lee regularly attended these confidential meetings. Indeed, he attended and
16 participated in the most recent CRAB meeting that occurred on May 16, 2005, in Redmond.
17 At that meeting, senior Microsoft executives briefed the CRAB members specifically on plans
18 for the MSN product in China.¹⁸ Moreover, through his work on the CRAB, Dr. Lee knows:
19 (1) the identity of Microsoft's specific planned investment targets in China and the amount of
20 those investments, and (2) Microsoft's existing and planned technical and capital initiatives in
21 the China market. Information of this kind would be extremely valuable to a competitor such
22 as Google that is actively seeking to move into the Chinese market.¹⁹

23
24 ¹⁴ *Id.*

25 ¹⁵ Dawson Decl., ¶¶ 3-5.

¹⁶ Declaration of Craig Mundie ("Mundie Decl."), ¶ 2-3.

¹⁷ Mundie Decl., ¶¶ 4-5.

¹⁸ Mundie Decl., ¶ 5.

¹⁹ Mundie Decl., ¶¶ 6-7.

1 **D. Dr. Lee Had Recent Access to Microsoft's Confidential Plans to Compete with**
2 **Google.**

3 Due to his status as a senior executive, Dr. Lee had frequent access to highly
4 confidential competitive plans including plans to compete with Google. For instance, Dr. Lee
5 attended a March 24, 2005, highly confidential executive-only briefing entitled "The Google
6 Challenge."²⁰ Through this briefing, and as an executive working on search product strategy,
7 Dr. Lee was made aware of: (1) Microsoft's overarching plan to compete with Google in the
8 search engine marketplace, (2) specific product characteristics and product components that
9 Microsoft is developing to advance that competition, and (3) specific strategic opportunities
10 identified by Microsoft as the most promising means to compete effectively with Google. In
11 short, Dr. Lee was recently handed Microsoft's entire Google competition "playbook."²¹

12 **E. Dr. Lee Recently Announced He is Leaving Microsoft to Accept a Position with**
13 **Google to Lead its New China Office.**

14 On July 5, 2005, while supposedly on a paid-sabbatical from which he had twice
15 promised to return to Microsoft, Dr. Lee informed the head of his department, Eric Rudder,
16 that he was considering an employment position offered by Google.²² Dr. Lee stated that he
17 had contacted Google regarding employment six weeks before. He stated that Google had
18 offered him the opportunity to build and lead its China office "end to end." Eric Rudder was
19 able to convince Dr. Lee to wait and explore opportunities for a Microsoft position in China.²³

20 Subsequent to this July 5 discussion, several senior executives at Microsoft met with
21 Dr. Lee in an attempt to convince him not to leave the company. However, on July 18, 2005,
22 Dr. Lee told Mr. Rudder that he had decided to resign from Microsoft and accept the offer

23 ²⁰ Payne Decl., ¶ 5.

24 ²¹ *Id.*

25 ²² Declaration of Eric Rudder ("Rudder Decl."), ¶¶ 4-6. Dr. Lee's decision to take a sabbatical and then not return to Microsoft violates company policy regarding sabbatical leave, a policy that Dr. Lee confirmed in writing, and orally, before he was granted a sabbatical. Rudder Decl., ¶¶ 4-5. Had Dr. Lee informed Microsoft that he planned to use his sabbatical to pursue other employment opportunities, he would not have been eligible to take a sabbatical. Rudder Decl., ¶ 7.

²³ Rudder Decl., ¶ 6.

1 from Google to work in China.²⁴ Google publicly announced its hiring of Dr. Lee the next
2 day, confirming that Dr. Lee's new position will be directly competitive to the work he
3 performed at Microsoft on search engines and the China market: "Google Inc, developer
4 of the award-winning search engine, today announced that it will open a product research and
5 development center in China, and has hired respected computer scientist and industry pioneer,
6 Dr. Kai-Fu Lee, to lead the operation and serve as President of the company's growing
7 Chinese operations."²⁵

8 Google's press release and public statements confirm that Dr. Lee will be working on
9 Google's search engine product in China. "The opening of an R&D center in China will
10 strengthen Google's efforts in delivering the best search experience to users and partners
11 worldwide."²⁶ "As Google continues to explore the Chinese market, *the center will focus on*
12 *the development of the company's existing products, as well as developing new innovative*
13 *technologies and projects."* (emphasis added).²⁷

14 III. STATEMENT OF THE ISSUE

15 Should the Court enter a temporary restraining order prohibiting Dr. Lee from working
16 for Google in violation of his Employment Agreement?

17 IV. EVIDENCE RELIED UPON

18 This motion relies upon the declarations of David Dawson, Jeffrey Johnson, Sin Lew,
19 Marla Mellies, Craig Mundie, Christopher Payne, and Eric Rudder, and any exhibits attached
20 thereto, and the pleadings and other papers on file.

21 V. AUTHORITY AND ARGUMENT

22 Microsoft allowed Dr. Lee access to its confidential information and trade secrets only
23 under express, written restrictions governing his conduct should he leave Microsoft's

24 ²⁴ Rudder Decl., ¶ 8; Mellies Decl., Ex. G (Dr. Lee's resignation letter).

25 ²⁵ Johnson Decl., Ex. B (Google Press Release).

26 ²⁶ *Id.*

27 ²⁷ Johnson Decl., Ex. C (China Business News On-Line, July 20, 2005, quoting a Google media representative from China).

1 employment, restrictions to which he agreed as a condition of his employment. Dr. Lee has
2 knowledge of sensitive and valuable Microsoft confidential competitive information
3 concerning search technology and strategy and Microsoft's business plans in China. He
4 promised not to compete directly with Microsoft for a period of one year. Dr. Lee breached
5 his promises by accepting a leadership position in China with Google -- a company whose
6 primary product stands in direct competition with Microsoft. Under these circumstances, the
7 Court can and should exercise its equitable powers to order Dr. Lee and Google to live up to
8 the promises that Dr. Lee made to Microsoft.²⁸

9 **A. Microsoft Is Entitled To A Temporary Restraining Order Because Dr. Lee is**
10 **Breaching His Promise Not To Compete With Microsoft.**

11 The decision to issue a temporary restraining order ("TRO") turns on the
12 circumstances of each case, Federal Way Family Physicians v. Tacoma Stands Up for Life,
13 106 Wn.2d 261, 264 (1986), and courts grant great deference to the equities of the situation,
14 Tyler Pipe Indus., Inc. v. Department of Revenue, 96 Wash. 2d 785, 792 (1982).

15 Significantly, it is well-established that injunctive relief is an appropriate remedy for
16 violations of a contractual promise not to compete. See, e.g., Wood v. May, 73 Wn.2d 307,
17 314 (1968). Under Washington law, a TRO is available where: (1) the plaintiff shows that it
18 has a clear legal or equitable right; (2) the plaintiff has a well-grounded fear of immediate
19 invasion of that right; and (3) the acts complained of are either resulting or will result in actual
20 or substantial injury to the plaintiff. Federal Way Family Physicians, 106 Wn.2d at 265.

21 **1. Microsoft Has a Clear Legal and Equitable Right.**

22 Dr. Lee's promises not to compete give Microsoft a legal right that is clearly
23 enforceable under Washington law. Non-compete agreements are enforceable if reasonably
24 necessary to protect the employer's confidential business information. See, e.g., Perry v.

25 ²⁸ On July 21, Microsoft's counsel notified defendants' counsel that this TRO hearing would be held on
Wednesday, July 27, and that the TRO papers would be filed and served by noon on Monday, July 25, 2005.
Therefore, defendants have received notice and an opportunity to be heard on this Motion. Johnson Decl., ¶ 2.

1 Moran, 109 Wn.2d 691, 700-01 (1987) (observing that a covenant not to compete is an
2 inherently reasonable way for an employer to protect himself against defecting employees
3 who might otherwise take advantage of information obtained from the employer), on
4 reconsideration, modified on other grounds by, 111 Wn.2d 885 (1989). As Washington
5 courts have repeatedly recognized, non-compete agreements are useful and beneficial
6 because they allow employers to share confidential information with employees without
7 unknowingly advancing the interests of competitors or would-be competitors. See, e.g.,
8 Copier Specialists, Inc. v. Gillen, 76 Wn. App. 771, 774 (1995). Such agreements are
9 enforceable despite an employee's insistence that he or she will not disclose confidential
10 business information. The very point of a non-compete is to provide a company with the
11 security of knowing that it does not have to rely on such assurances. See Cabot Corp. v.
12 King, 790 F. Supp. 153, 156-58 (N.D. Ohio 1992) (“[t]here is no way, short of banning
13 [employee] from working for [competitor] of insuring that [employee] will not divulge the
14 information he had regarding [former employer]”). Consequently, a non-compete agreement
15 will be enforced so long as it is reasonably necessary to protect the employer's business, does
16 not impose on the employee any greater restraint than is reasonably necessary for that
17 protection, and is not contrary to the public interest. Perry, 109 Wn.2d at 698.

18 a. **The Restraint is Reasonably Necessary to Protect Microsoft's**
19 **Confidential Business Information.**

20 In this instance, the restraint is necessary to protect Microsoft's business and
21 competitive interests. Microsoft has a paramount interest in protecting its confidential,
22 proprietary and trade secret information. This is particularly true where, as here, there is an
23 extremely close nexus between the work done by Dr. Lee at Microsoft and the work he will do
24 at Google. Both the product line (search engine technology) and the geographical market
25 (China) directly overlap.

Non-compete clauses such as the one agreed to by Dr. Lee serve the legitimate purpose

1 of ensuring that Microsoft's confidential information is not used in competition with
2 Microsoft. "The essential purpose of the post-employment restraint . . . is . . . to prevent
3 competitive use, for a time, of information or relationships which pertain peculiarly to the
4 employer and which the employee acquired in the course of the employment." Perry, 109
5 Wn.2d at 702 (citing Blake, *Employee Agreements Not To Compete*, 73 Harv. L. Rev. 625,
6 647 (1960)).

7 Not only did Microsoft give Dr. Lee access to its proprietary and confidential plans
8 and strategies, it allowed him direct access to its most valuable trade secrets, including the
9 technical architecture and specifications for its search-engine technologies and future plans.
10 Indeed, Dr. Lee spent many hours -- while being paid handsomely by Microsoft -- learning
11 and refining this technical architecture. It took Microsoft several years and a substantial
12 monetary investment to develop these technologies. The architecture, design, code and future
13 development plans for Microsoft's search engine products are not known outside of Microsoft,
14 and Microsoft takes special precautions to ensure the secrecy of this information. This is
15 precisely why a TRO is reasonably necessary to protect Microsoft's business and goodwill.

16 b. **The Restriction Is No Greater Than Is Reasonably Necessary to**
17 **Protect Microsoft's Legitimate Business Interests.**

18 The non-compete provisions of the Employment Agreement are well within the bounds
19 of what courts typically consider to be reasonable restraints. The scope of the non-compete
20 provision agreed to by Dr. Lee is quite narrow, applying only to certain, defined competitive
21 activities and *continuing for only one year after termination of employment*. The non-compete
22 does not prohibit Dr. Lee from working for a Microsoft competitor. Instead, Dr. Lee's
23 Agreement only prohibits competition in the specific areas where Dr. Lee worked for
24 Microsoft or in areas where he was exposed to confidential or proprietary information. Such a
25 narrowly crafted prohibition on competition for only one year imposes little burden on Dr.
Lee, and is far less restrictive than other non-compete agreements that courts in this state have

1 enforced in other cases. Compare Knight, Vale & Gregory v. McDaniel, 37 Wn. App. 366,
 2 369-71, rev. denied, 101 Wn.2d 1025 (1984) (finding a three-year non-compete reasonable
 3 because company had legitimate business interest in protecting important information and
 4 relationships); Racine v. Bender, 141 Wn. 606, 610 (1927) (finding three-year non-compete
 5 “reasonably necessary to protect the business or good will of the employer”).

6 In light of the limited scope of the non-compete and Microsoft’s worldwide business,
 7 the absence of an explicit geographical scope to the agreement is irrelevant. Microsoft’s
 8 business, including its search business, is worldwide, and its business interests in China are
 9 substantial.²⁹ Washington courts “have consistently recognized that an employer is entitled to
 10 a restrictive covenant that is as broad in scope as the business which the covenant seeks to
 11 protect.” ISC-Bunker Ramo Corp. v. Altech, Inc., 765 F. Supp. 1310, 1336 (N.D. Ill. 1990)
 12 (applying Washington law to uphold a nationwide non-compete and citing Central Credit
 13 Collection Control Corp. v. Grayson, 7 Wn. App. 56, 59 (1972)).

14 c. **The Agreement Imposes No Undue Hardship on Dr. Lee or the**
 15 **Public.**

16 Significantly, the non-compete provision of the Agreement does *not* limit Dr. Lee’s
 17 ability to work for *all* competitors of Microsoft. Rather, it only prohibits him from working
 18 for competitors who actually compete with Microsoft with respect to the same product or
 19 technology that he worked on or obtained confidential information about while employed at
 20 Microsoft, and only for one year. There are many positions with Microsoft’s competitors that
 21 Dr. Lee could undertake without violating his agreement. Moreover, there will be no
 22 substantial impact to the public by enforcing Dr. Lee’s promises in this case. The public is
 23 best served by fair competition in the marketplace. Dr. Lee’s Employment Agreement serves
 24 to protect and enable such fair competition by protecting Microsoft’s confidential information
 25 from misuse.

²⁹ Mundie Decl., ¶¶ 2-7.
 MOTION FOR TEMPORARY
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1 The non-competition provision is narrowly tailored to protect Microsoft's legitimate
2 interests. Consequently, Microsoft's rights under the Agreement are fair and enforceable.

3 **2. Microsoft Has a Well-Founded Fear that Its Legal Rights Are Being and**
4 **Will Continue to Be Violated.**

5 On July 18, 2005, defendant Dr. Lee confirmed his resignation from Microsoft and his
6 intention to accept his new employment with Google.³⁰ Dr. Lee will immediately begin work
7 on behalf of Google and its directly competing search-engine product.³¹ Therefore, a direct
8 violation of Microsoft's contractual rights is not just threatened, it is already occurring, and
9 will continue unless the Court grants Microsoft's request for a TRO.

10 **3. If Defendants Are Permitted to Unfairly Compete, Microsoft Will Suffer**
11 **Actual and Substantial Injury.**

12 Defendants' conduct illustrates precisely why a limited non-compete provision was
13 included in Dr. Lee's Employment Agreement, and why a TRO is necessary to protect
14 Microsoft's proprietary and confidential information from improper use by a direct
15 competitor. If defendants are not enjoined, the essential purpose of the non-compete provision
16 will be frustrated. Perry, 109 Wn.2d at 702 ("The essential purpose of the post-employment
17 restraint . . . is . . . to prevent competitive use, for a time, of information or relationships which
18 pertain peculiarly to the employer and which the employee acquired in the course of the
19 employment."). Microsoft will have no effective remedy because the harm is immediate, hard
20 to quantify, and the one-year limitation period will likely expire before trial. Absent an
21 immediate injunction, Microsoft loses the benefit of its bargain, while Dr. Lee has already
22 obtained all the benefits. Such a result would be manifestly inequitable. Indeed, for these
23 reasons Dr. Lee agreed to injunctive relief in paragraph 12 of his Agreement.

24 Threatened misappropriation of a trade secret is itself grounds for injunctive relief.
25 RCW 19.108.020. A showing of harm is not required for injunctive relief when trade secret

³⁰ Rudder Decl., ¶ 8; Mellies Decl., Ex. G.

³¹ Johnson Decl., Exs. B-C.

1 misappropriation is at issue because the harm is inherent. See Boeing Co. v. Sierracin Corp.,
2 108 Wn.2d 38, 62-63 (1987). “[D]amages will not be an adequate remedy when the
3 competitor has obtained the secrets. The cat is out of the bag and there is no way of knowing
4 to what extent their use has caused damage or loss.” National Starch & Chem. Corp. v. Parker
5 Chem. Corp., 530 A.2d 31, 33 (N.J. Super. A.D. 1987).

6 Finally, a TRO is necessary because the actual and substantial injury Microsoft has
7 suffered and will continue to suffer as a result of defendants’ breach is unlikely to be
8 adequately remediable at law—*i.e.*, by monetary damages. As the Washington Supreme Court
9 has acknowledged, monetary damages are inherently difficult to ascertain when dealing with a
10 breach of a promise not to compete: “[I]t must be conceded that, in this type of case, the harm
11 caused by the breach *usually is incapable of accurate estimation.*” Management, Inc. v.
12 Schassberger, 39 Wn.2d 321, 328 (1951) (emphasis added). In this case, the direct financial
13 harm associated with Dr. Lee’s use of Microsoft’s proprietary and confidential intellectual
14 property at Google -- while substantial -- will be very difficult to ascertain.

15 **VI. CONCLUSION**

16 For all of the aforementioned reasons, Microsoft is entitled to a Temporary Restraining
17 Order holding Dr. Lee and Google to Dr. Lee’s promises.

18
19 DATED this 25th day of July, 2005.

20 PRESTON GATES & ELLIS LLP

21
22 By 
23 Jeffrey C. Johnson, WSBA #23066
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