

1 Richard A. Jones (SBN: 135248)  
2 COVINGTON & BURLING  
3 One Front Street  
4 San Francisco, CA 94111  
5 TEL: (415) 591-6000  
6 FAX: (415) 591-6091  
7 E-MAIL: rjones@cov.com

8 E. Edward Bruce (*pro hac vice*)  
9 William D. Iverson (*pro hac vice*)  
10 Joshua D. Wolson (*pro hac vice*)  
11 COVINGTON & BURLING  
12 1201 Pennsylvania Avenue N.W.  
13 Washington, D.C. 20004  
14 TEL: (202) 662-6000  
15 FAX: (202) 662-6291  
16 E-MAIL: ebruce@cov.com  
17 wiverson@cov.com  
18 jwolson@cov.com

19 Attorneys for Applicant Microsoft Corp.

20 UNITED STATES DISTRICT COURT  
21 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
22 SAN JOSE DIVISION

23 *In re*  
24 Application Of  
25 MICROSOFT CORPORATION,  
26 Applicant.

Case No. 06-80038 JF (PVT)

**SUPPLEMENTAL DECLARATION  
OF JOSHUA D. WOLSON IN  
SUPPORT OF APPLICANT'S  
OBJECTION TO MAGISTRATE'S  
RULING**

Date: TBD  
Time: TBD  
Place: Courtroom Three, Fifth Floor

Hon. Jeremy D. Fogel

1 Joshua D. Wolson declares as follows:

2 1. I am an attorney for the law firm of Covington & Burling, counsel for  
3 Microsoft Corp. in the above-captioned action. I make this declaration based on personal  
4 knowledge and facts acquired in the course of my duties.

5 2. On March 28, 2006, the Hon. Mark L. Wolf of the U.S. District Court for  
6 the District of Massachusetts held a hearing on Novell's motion to quash a subpoena issued to it  
7 by Microsoft pursuant to an application under 28 U.S.C. § 1782 that is substantially similar to  
8 the application in this proceeding. Attached at Exhibit A is a copy of the "Excerpt Transcript"  
9 of that hearing, which includes the Massachusetts District Court's findings and analysis.

10 3. Attached at Exhibit B is a copy of a letter dated March 24, 2006, sent to  
11 Microsoft by the hearing officer of the European Commission ("Commission") who decides  
12 procedural matters in connection with the Commission's proceeding against Microsoft. In the  
13 letter, the hearing officer determined that Microsoft would be "provided with non-confidential  
14 versions" of documents provided by third parties such as Sun and Oracle to the Monitoring  
15 Trustee. A copy of this letter was provided to the Magistrate during the hearing held before her  
16 on March 27, 2006.

17 4. Attached at Exhibit C is a copy of a letter dated March 28, 2006, which  
18 was sent to Microsoft from the Commission, providing Microsoft with "documents exchanged  
19 between IBM, Oracle and Sun and the Trustee ...." Attached to that letter was a list of  
20 documents that the Commission withheld from its production, which reveals that the  
21 Commission did not withhold as confidential any documents evidencing communications with  
22 Oracle or Sun. Because Microsoft did not receive these documents in Europe until after the  
23 hearing before the Magistrate, Microsoft did not have an opportunity to place these documents  
24 in the record before the Magistrate. Among the documents provided are the following:

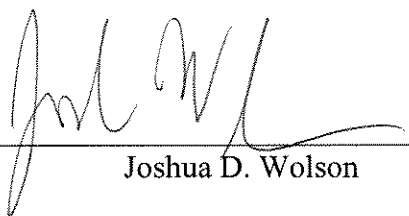
25 a. Attached at Exhibit D is a copy of an e-mail provided to Microsoft  
26 by the Commission reflecting the scheduling details of a conference call between Sun  
27 Microsystems, Inc., its counsel, and the Monitoring Trustee appointed by the Commission to  
28

1 monitor Microsoft's compliance with the Commission's decisions finding Microsoft to be in  
2 violation of European competition law.

3 b. Attached at Exhibit E is a copy of an e-mail confirming that the  
4 Monitoring Trustee would visit Sun's facilities in Burlington, Massachusetts in December 2005.

5 c. Attached at Exhibit F is a copy of an e-mail between the  
6 Monitoring Trustee and counsel for Oracle seeking to arrange a meeting between the  
7 Monitoring Trustee and "Ronald" – presumably Ronald Alepin, an advisor who had been  
8 retained by Oracle.

9 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the  
10 foregoing is true and correct. Dated April 3, 2006.

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14 Joshua D. Wolson

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