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9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN JOSE DIVISION

12  
 13 *In re*  
 14 Application of  
 15 MICROSOFT CORPORATION,  
 16 Applicant.

CASE NO. 06-80038 JF (PVT)

**ORACLE CORPORATION'S RESPONSE  
 TO MICROSOFT CORPORATION'S  
 MOTION TO EXPAND THE RECORD**

Date: To be set  
 Time: To be set  
 Place: To be set  
 Before: Hon. Jeremy Fogel

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1 Microsoft Corporation has filed a motion for *de novo* review of an Order quashing  
2 subpoenas directed to Oracle Corporation, its legal counsel, and its technical advisor  
3 (collectively “Oracle”) and to expand the record. Oracle does not oppose Microsoft’s motion to  
4 expand the record. However, Oracle respectfully submits that the record should be further  
5 expanded to include: (1) a recent filing by the European Commission in the related proceedings  
6 in the District of Massachusetts; (2) a recent supplemental submission submitted by Microsoft in  
7 the District of Massachusetts; and (3) a Memorandum and Order issued today granting Novell,  
8 Inc.’s motion to quash.

9 On April 6, 2006, the European Commission filed: Memorandum of the  
10 Commission of the European Communities In Support of Novell, Inc.’s Motion To Quash. *See*  
11 Exhibit B to the Supplemental Declaration of Christopher S. Yates. That filing was in response  
12 to a request made by Judge Wolf of the District of Massachusetts at the hearing on Novell’s  
13 Motion to Quash. On April 12, 2006, Microsoft Corporation filed a Reply to Response of  
14 Novell, Inc. *See* Exhibit C to the Supplemental Declaration of Christopher S. Yates. On April  
15 17, 2006, Judge Wolf issued a Memorandum and Order granting Novell’s motion to quash. *See*  
16 Exhibit A to the Supplemental Declaration of Christopher S. Yates

17 Oracle respectfully moves to expand the record to include the European  
18 Commission’s filing in support of Novell’s motion to quash, Microsoft’s supplemental  
19 submission, and Judge Wolf’s Order. The European Commission’s filing and Microsoft’s  
20 supplemental submission were made after the hearing before Magistrate Judge Trumbull and  
21 Judge Wolf’s Order was issued just today. All are pertinent given Microsoft’s heavy reliance on  
22 Judge Wolf’s tentative order in its objections to Magistrate Judge Trumbull’s Order. Indeed, the  
23 primary bases for Microsoft’s objections to Magistrate Judge Trumbull’s Order were Judge  
24 Wolf’s tentative order and an assertion that Magistrate Judge Trumbull had committed an error  
25 because she had failed to consider that the Commission supposedly does not have the power to  
26 obtain the discovery Microsoft seeks.

27 Microsoft has now admitted in its supplemental submission in the District of  
28 Massachusetts that its assertion about the Commission’s power was wrong and Judge Wolf has

1 now granted Novell's motion to quash, noting: "The information submitted since the March 28,  
2 2006 hearing demonstrates that Microsoft erroneously, repeatedly represented that the  
3 Commission of the European Communities (the 'Commission') could not obtain and, if it  
4 wished, make available to Microsoft the documents Microsoft seeks by its § 1782(a) subpoena."

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7 Dated: April 17, 2006

Respectfully submitted,

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LATHAM & WATKINS LLP

Daniel M. Wall

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Christopher S. Yates

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By \_\_\_\_\_ /S/

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