

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (CKK)

Next Court Deadline: December 12, 2002

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF MOTION FOR APPOINTMENT OF
TECHNICAL COMMITTEE MEMBERS**

Plaintiff, the United States of America, files this Memorandum in support of Plaintiff’s Motion for Appointment of Dr. Harry J. Saal and Franklin Fite, Jr. as Members of the Technical Committee. Section IV.B.3.b of the Final Judgment in the above-captioned case requires that Plaintiff and Plaintiff states, the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina, and Wisconsin (the “Settling States”), apply to this Court for the appointment of the person selected by Plaintiff and the Settling States and the person selected by Microsoft to serve on the Technical Committee, as described in Section IV of the Final Judgment.¹

On November 11, 2002, pursuant to Section IV.B.3.a of the Final Judgment, Plaintiff and the Settling States identified to Microsoft Dr. Harry J. Saal as their proposed designee to the

¹ It is Plaintiff’s understanding that the Settling States will file a parallel Motion in *State of New York, et al., v. Microsoft Corporation*, CA No. 98-1233 (CKK) to appoint Dr. Harry J. Saal and Franklin Fite, Jr. as Technical Committee Members.

Technical Committee. Microsoft, simultaneously, identified Franklin Fite, Jr. as its proposed designee to the Technical Committee. Neither Plaintiff, the Settling States, nor Microsoft objects under Section IV.B.2 to either of these individuals being appointed as Members of the Technical Committee. Plaintiff, together with the Settling States, and Microsoft interviewed the other party's proposed designee, and Plaintiff, in consultation with the Settling States, conducted a thorough background investigation of both individuals, including an evaluation of financial conflicts. Both Dr. Saal and Mr. Fite are experts in software design and programming, and neither has a conflict of interest that could prevent him from performing his duties under the Final Judgment in a fair and unbiased manner. Accordingly, Plaintiff respectfully requests that the Court appoint Dr. Harry J. Saal and Franklin Fite, Jr. to serve as Members of the Technical Committee pursuant to Section IV of the Final Judgment.²

I. Technical Committee Member Selected by Plaintiff and the Settling States

Plaintiff and the Settling States select Dr. Harry J. Saal to be a Member of the Technical Committee. Dr. Saal has extensive experience in a variety of senior management and technical positions with both "start-ups" and large technology firms. Most notably, he was founder and Chief Executive Officer of Network General Corporation (now Network Associates, Inc.), which was the first company dedicated to network diagnostics, as well as founder of Nestar Systems, Incorporated, which was one of the first companies to specialize in local area network systems

² Pursuant to Section IV.B.3 of the Final Judgment, after their appointment by this Court, Dr. Saal and Mr. Fite will identify to Plaintiff, the Settling States, and Microsoft the person that they select as the third Member of the Technical Committee. The Plaintiff and the Settling States will then move this Court for appointment of that third Member.

for personal computers. Dr. Saal also recently served as a Director for several other high technology firms, including Imaging Technologies Corporation and Inprise Corporation. Dr. Saal, who received his Doctorate, Master's, and Bachelor's degrees in Physics from Columbia University, has also taught in the field of Computer Science. Dr. Saal currently serves as Chairman of the Board for Octago, a San Francisco-based company that offers advanced Internet-enabled solutions addressing the needs of employee recruiters. A true and correct copy of Dr. Saal's biography and curriculum vitae is attached hereto as Exhibit A.

II. Technical Committee Member Selected by Microsoft

Microsoft selects Franklin Fite, Jr. to be a Member of the Technical Committee. Mr. Fite has had extensive software engineering experience after graduating with a Master of Science degree in Computer Engineering from Stanford University and a Bachelor of Engineering degree in Computer Science and Electrical Engineering from Vanderbilt University. He previously was employed as a supervisor for the Software Process Laboratory at AT&T Bell Laboratories, and also worked for Microsoft from 1992 to 2000 as a Director for the Windows CE Operating System and a General Manager for the Windows CE Platforms. Most recently, Mr. Fite served as President and Chief Technology Officer of Nimble Technology, a "start-up" enterprise software company that develops and sells XML-based data integration products. A true and correct copy of Mr. Fite's curriculum vitae is attached hereto as Exhibit B.

III. Conclusion

Dr. Saal and Mr. Fite have both had extensive experience in a variety of technical and

managerial positions involving software and other high technology. Both satisfy the requirements for serving on the Technical Committee set forth in Section IV.B.2 of the Final Judgment and are well-qualified to fulfill the responsibilities of a Technical Committee Member. Plaintiff, therefore, respectfully requests that the Court appoint Dr. Saal and Mr. Fite to serve as Members of the Technical Committee.

Dated: November ____, 2002

Respectfully submitted,

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