

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO: 1:10-CIV-24063-MORENO

MOTOROLA MOBILITY, INC.,)
)
)
 Plaintiff,)
)
 vs.)
)
)
 MICROSOFT CORPORATION,)
)
 Defendant.)
)

**JOINT AGREED MOTION FOR LEAVE TO FILE ENLARGED
CLAIM CONSTRUCTION BRIEFS**

Motorola Mobility, Inc. (“Motorola Mobility”) and Microsoft Corp. (“Microsoft”) (collectively, the “Parties”) jointly move this Court for leave to file enlarged briefs. This is a large and complex patent infringement case that involves 14 separate patents, more than 30 accused products, and collectively more than 150 asserted claims across the patents-in-suit. The Parties have endeavored to limit the number of claim construction issues presented to the Court, and therefore, claim construction proceedings are limited to a total of 64 claim terms for construction by the Court.¹ In order to have sufficient minimal space to address all of these claim terms, the Parties met and conferred and propose the following page limitations for claim construction briefing on these 64 terms to 95 pages each for simultaneous opening briefs, and 50 pages each for simultaneous response briefs. In further support of their motion, the Parties state:

1. This action involves claims by both Motorola Mobility and Microsoft for patent infringement with respect to fourteen (14) patents – seven patents each for Motorola Mobility and Microsoft.² The patents-in-suit pertain to a variety of products and associated software covering a wide range of technologies. Collectively, the Parties assert that more than 30 products infringe the patents-in-suit.³

¹ The Parties agreed to limit the number of claim terms to 25 terms per side, plus the addition of any means-plus-function claim terms that require construction.

² Motorola has accused Microsoft of infringing U.S. Patent Nos. 5,502,839 (“the ‘839 patent”), 5,764,899 (“the ‘899 patent”), 5,784,001 (“the ‘011 patent”), 6,272,333 (“the ‘333 patent”), 6,408,176 (“the ‘176 patent”), 6,757,544 (“the ‘544 patent”) and 6,983,370 (“the ‘370 patent”) (collectively, “the asserted patents”). Compl. at ¶¶ 7-13. In its counterclaim, Microsoft has alleged that Motorola has infringed seven patents: U.S. Patent Nos. 6,791,536 (“the ‘536 Patent”), 6,897,853 (“the ‘853 Patent”), 7,024,214 (“the ‘214 Patent”), 7,493,130 (“the ‘130 Patent”), 7,383,460 (“the ‘460 Patent”), 6,897,904 (“the ‘904 Patent”), and 6,785,901 (“the ‘901 Patent”). Counterclaim at ¶¶ 8-14.

³ Motorola Mobility has accused, among other products, Windows Phone 7 with Silverlight, Windows Live Messenger 2011, Exchange Server 2010 with Unified Messaging, and Bing Maps and Bing Local for smartphones. Microsoft has accused, among other products, Motorola’s

2. On April 22, 2011, the Parties disclosed the claim terms that they believe require construction by the Court. On May 6, 2011, the Parties exchanged preliminary claim constructions. Thereafter, on May 20 and June 3, 2011, the Parties supplemented their disclosures and proposed claim constructions. By agreement after good faith negotiations, the Parties have identified a total of 64 separate claim terms that require construction by the Court. The Parties' claim construction briefs may address, *inter alia*, the language of the patents-in-suit and other pertinent evidence supporting their proposed constructions.⁴

3. On May 21, 2011, the Parties filed a Joint Motion for Clarification of Page Limits for Claim Construction Briefs (Dkt # 51), stating that the Local Rules do not appear to set a page limitation on claim construction briefs (See Paragraph 6). The Court subsequently denied the Parties' motion and stated that "clarification is unnecessary." (Dkt # 66). The Parties understand the Court's order to mean that claim construction briefs are not motions, and thus the page limit for motions in L.R. 7.1(c)(2) does not apply. However, in the event that the Parties' understanding is not correct and to ensure compliance with the Local Rules, out of an abundance of caution the Parties file this alternative joint motion for leave to file enlarged claim construction briefs.

4. If, however, the Court determines that the page limitations set forth in Local Rule 7.1(c)(2) apply, the Parties respectfully request this Court to permit 95 pages for opening briefs and 50 pages for response briefs. Although the resulting briefs may appear voluminous, the Parties believe that this expanded number of pages will provide this Court with at least the

Android-based phones (including, but not limited to, the Motorola Droid X, Bravo and Zoom) and Motorola set-top boxes with DVR functionality.

⁴ Each Party has retained 11 expert witnesses in this litigation, 22 in total. To date, Motorola has deposed 42 fact witnesses, while Microsoft has deposed 34 fact witnesses, including inventors of the patents-in-suit.

minimum amount of information necessary to resolve disputes concerning the 64 claim terms. The proposed page limitation for opening briefs allocates less than two pages of discussion for each disputed claim term (with even less space allotted for response briefs).

WHEREFORE, in the event this Court determines that the page limitations set forth in Local Rule 7.1(c)(2) apply to claim construction briefs, the Parties respectfully request leave to file 95 page opening briefs and 50 page response briefs.

Dated: July 21, 2011

By: /s/ Edward M. Mullins (w/consent) By: /s/ Curtis Miner

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of July, 2011, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will automatically send email notification of such filing to all counsel who have entered an appearance in this action.

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