

CONTAINS CONFIDENTIAL BUSINESS INFORMATION
SUBJECT TO PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:10-cv-24063-MORENO

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

MICROSOFT CORPORATION’S STATEMENT OF MATERIAL FACTS

EXHIBIT A

FACT	SUPPORT
<p>Motorola accuses Microsoft of infringing claims 9-16 and 18-23 of U.S. Patent No. 5,502,839 (the '839 patent) with Windows Presentation Foundation (“WPF”) component of the .NET Framework for the Windows 7 operating system, the Silverlight Application Programming Interface (“API”) with the Windows 7 operating system, the Silverlight for Windows Phone API with the Windows Phone 7 operating system, the Direct2D API with the Windows 7 operating system, as well as each of those products – except for Silverlight for Windows Phone – with the Windows Vista operating system.</p>	<p>First Expert Report of John Sibert, Ph.D. Regarding Whether Certain Claims of U.S. Patent No. 5,502,839 are Practiced by Defendant Microsoft Corporation at ¶31 and Exhibits B-E.</p>
<p>Claims 9 and 10-14 require a “source of virtual input.”</p>	<p>U.S.P.N. 5,502,839.</p>
<p>Claims 15, 16, and 18-23 require “an interface between processes and data in said system and physical input” and “means responsive to one of said physical input devices for generating a picture.”</p>	<p>U.S.P.N. 5,502,839.</p>
<p>Microsoft's proposed construction of the term "source of virtual input " is " a physical input device corresponding to a virtual input device."</p>	<p>Defendant Microsoft Corporation's Disclosure of Proposed Claim Constructions.</p>
<p>Motorola's proposed construction for the term " source of virtual input " is " A process which generates one or more picture elements from user input."</p>	<p>Defendant Microsoft Corporation's Disclosure of Proposed Claim Constructions.</p>
<p>Microsoft's proposed construction of the term " means responsive to one of said physical input devices for generating a picture " is " generating a picture from the input from a physical input device."</p>	<p>Defendant Microsoft Corporation's Disclosure of Proposed Claim Constructions.</p>

FACT	SUPPORT
<p>Motorola's proposed construction for the term " means responsive to one of said physical input devices for generating a picture " is " generating a picture comprising one or more picture elements responsive to a user's interaction with a physical input device."</p>	<p>Defendant Microsoft Corporation's Disclosure of Proposed Claim Constructions.</p>
<p>Motorola accuses Microsoft of infringing claims 1, 4, and 6 of U.S. Patent No. 5,784,001 (the '001 patent)with Windows Live Messenger 2011.</p>	<p>First Expert Report of Dr. Martin E. Kaliski, Ph.D. Regarding Whether Certain Claims of U.S. Patent No. 5,783,001 (sic) are Practiced by Defendant Microsoft Corporation at ¶27 and Exhibit D.</p>
<p>Claim 1 requires "presenting...the at least one image as a graphic message that is accompanied by the alphanumeric message on a display."</p>	<p>U.S.P.N. 5, 784,001.</p>
<p>Claim 4 requires "a display...for presenting...the at least one image as a graphic message accompanied by the alphanumeric message."</p>	<p>U.S.P.N. 5, 784,001.</p>
<p>Claim 6 requires "a display ... for presenting...a corresponding image as a graphic message accomplished by the message."</p>	<p>U.S.P.N. 5, 784,001.</p>
<p>Microsoft's proposed construction of the term "graphic message that is accompanied by the alphanumeric message"/"graphic message accompanied by the alphanumeric message"/"graphic message accompanied by the message" is "At least one supplemental image is displayed along with the entire alphanumeric message."</p>	<p>Defendant Microsoft Corporation's Disclosure of Proposed Claim Constructions.</p>

FACT	SUPPORT
<p>Motorola's proposed construction for the term "graphic message that is accompanied by the alphanumeric message"/"graphic message accompanied by the alphanumeric message"/"graphic message accompanied by the message" is "At least one image is displayed along with a portion of, or the entire, alphanumeric message."</p>	<p>Defendant Microsoft Corporation's Disclosure of Proposed Claim Constructions.</p>
<p>The original claims were directed to embodiments using codes, including embodiments using codes to insert graphics into a portion of the message.</p>	<p>MS-MOTO-SDFLA_00000017201-204 (original claims); 3:17-5:14.</p>
<p>The applicants cancelled the claims directed to codes and amended the remaining claims substantially.</p>	<p>MS-MOTO-SDFLA_00000017248-251 (amended claims).</p>
<p>One amendment was the addition of the "accompanied by" language.</p>	<p>MS-MOTO-SDFLA_00000017248-251.</p>
<p>The applicants distinguished their invention from the cited art by saying that the references did not disclose "a graphic message ... as well as the original alphanumeric message received by the communications receiver" and contained "no suggestion that a graphic message can be displayed to supplement the meaning of a conventionally entered and received alphanumeric message."</p>	<p>MS-MOTO-SDFLA_00000017254-255.</p>
<p>The applicants explained that "the alphanumeric message itself is presented along with any graphic message so that meaning of the graphic message is clarified when read by a user having the appropriate language skills."</p>	<p>MS-MOTO-SDFLA_00000017255.</p>

FACT	SUPPORT
There is no evidence that the products practicing any of the Motorola Patents-in-Suit were marked with a patent designation together with the number of the patent.	(Ex. #19) Motorola Mobility, Inc.’s Responses to Rule 30(b)(6) Deposition Notice dated June 6, 2011, Topic 59 at pages 62-63.
There is no evidence that Microsoft was notified of any alleged infringement of any of the Motorola Patents-in-Suit prior to the filing of this action on November 10, 2010.	(Ex. #20) Motorola Mobility, Inc.’s Responses to First Set of Interrogatories filed on February 25, 2011, No. 8 at pages 19-20.
No Marketplace server is located in the “fixed portion of the wireless communication system.”	‘333 patent, FIG. 1; Wedig Report, ¶ 124-126; Ex. 2, Geier Report, ¶ 139-145.
No Marketplace server performs “controlling a delivery of data.”	Wedig Report, ¶ 8, 85-95.
Neither Windows Mobile 6.5 nor Windows Phone 7.0 maintains an “application registry comprising a list of all software applications that are currently accessible to the subscriber unit.”	Wedig Report, ¶ 127-128.
Neither Windows Mobile 6.5 nor Windows Phone 7.0 meets the limitation “in response to a change in accessibility of an application . . . communicate the change to the fixed portion of the wireless communication system.”	Wedig Report, ¶ 8, 60-62, 75-78, 84-85, 143-146.