

**CONFIDENTIAL BUSINESS INFORMATION  
SUBJECT TO PROTECTIVE ORDER**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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

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MOTOROLA MOBILITY, INC.,		)
	Plaintiff,	)
		)
vs.		)
		)
MICROSOFT CORPORATION,		)
	Defendant.	)
<hr/>		)
MICROSOFT CORPORATION,		)
	Counterclaim Plaintiff,	)
		)
vs.		)
		)
MOTOROLA MOBILITY, INC.,		)
	Counterclaim Defendant.	)
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**DEFENDANT MICROSOFT CORPORATION'S MOTIONS *IN LIMINE***

Pursuant to the Court's Scheduling Order (Dkt # 23) and Order Continuing Trial and Certain Pretrial Dates (Dkt #36), Defendant-Counterclaim Plaintiff Microsoft Corporation ("Microsoft"), hereby submits it Motions *in Limine* and moves the Court pursuant to Federal Rules of Evidence 103(c) and 104(c) to order that Plaintiff-Counterclaim Defendant Motorola  
THIS MOTION IS BEING FILED IN REDACTED FORM. THE UNREDACTED VERSION OF THIS MOTION AND ATTACHMENTS THERETO ARE BEING FILE UNDER SEAL

Mobility, Inc. (“Motorola”), its attorneys, and any of its witnesses refrain from (1) making any reference, mention, statement, suggestion, or allusion to, (2) giving any testimony or arguments concerning, or (3) introducing any exhibits before the jury or jury panel (collectively, making “any reference to”) concerning any of the following matters:

A. Discovery Disputes and/or Claims of Incomplete Discovery Responses or Disclosures.

Any reference to discovery disputes between the parties are irrelevant to the trial of this case . To the extent Motorola believed that any of Microsoft’s discovery responses, document production, or disclosures are or were incomplete, those issues should have been brought to the attention of the Court prior to trial or resolved between the parties without Court intervention. Thus, the Court should exclude any reference to the sufficiency of discovery responses, documents, and/or disclosures. FED. R. EVID. 403.

B. Timing of Microsoft’s Document Production. Any reference to the timing of or when

Microsoft produced documents would be irrelevant, confuse the jury and prejudice Microsoft.

FED. R. EVID. 402, 403.

C. Failure to Disclose, Produce or Supplement. Pursuant to Rule 37 of the Federal Rules of

Civil Procedure and the Scheduling Orders entered in this case, any reference to or any opinion

testimony from any person not timely designated as an expert witness except as permitted by FED.

R. EVID. 701 would be prejudicial to Microsoft.

D. Presence or Absence of Microsoft Witnesses. The Court should preclude Plaintiffs from

commenting on the presence or absence of Microsoft witnesses at trial because such evidence is

not relevant to any of the issues in the case, and any probative value is substantially outweighed

by the danger of unfair prejudice and confusion of the issues. As a result of professional and personal obligations, coupled with the extensive travel times required to attend trial over an uncertain time period, certain Microsoft witnesses are not able to appear at trial. Other Microsoft witnesses who may be relevant to this lawsuit may no longer work at Microsoft, and Microsoft will not be able to compel them to appear at trial. Plaintiffs may attempt to use the absence of these Microsoft witnesses to speculate as to the reasons for the witnesses' absence and to suggest an improper motive or basis for such absence. This is improper and should be precluded. FED. R. EVID. 402, 403.

E. Impact of Verdict. Any reference to the impact a verdict in this case would have upon Motorola or Microsoft, including but not limited to economic, business, and reputational effects, or any reference to the impact a verdict in this case might have upon consumers of cellular phones, digital video recorders, and software products or competition within the market for these products, is irrelevant and may confuse or mislead the jury into resolving this case based on factors other than the evidence and the law, and thus should be precluded. FED. R. EVID. 402, 403.

F. Any Mention of the Possibility or Lack of Possibility of an Injunction. Because injunctive relief is an issue for the Court and not the jury, telling the jury about a possible injunction would be improper. The determination of whether an injunction should issue lies within the discretion of the Court and occurs only after the jury has reached its verdict on liability. Comments before the jury relating to the possible issuance of an injunction are irrelevant to the jury's liability deliberations and are inadmissible. Further, such references or suggestions would prejudice the venire, mislead and confuse the jury, and be unfairly prejudicial to the parties. FED. R. EVID. 402, 403.

G. Opinions or Analysis by Experts Not Testifying in This Case. Any reference to analysis, opinion, or testimony of experts retained by Motorola who are not called to testify either live or by deposition in this case should be precluded. All such analyses, opinions, and testimony are hearsay and improper expert opinion in this case, and thus any references to them should be excluded. FED. R. EVID. 402, 403, 702, 703, and 802.

H. Settlement Discussions. Any reference to any communication by Microsoft, their counsel, or representatives with Motorola or their attorneys or representatives concerning possible settlement of this case or any other case, including the contents of any such communications and responses thereto, would be highly prejudicial and not probative on any issue in this case. FED. R. EVID. 408. Any reference to these meetings, including reference to any business discussions during these meetings, would be unfairly prejudicial to Microsoft. FED. R. EVID. 403, 408.

I. Mediation. Any reference to the mediation in this case or any statements made or materials revealed in connection with mediation in this case would be highly prejudicial and not probative on any issue in this case. FED. R. EVID. 402, 403, 408.



L. Microsoft's revenues or profits from products and services not accused by Motorola.

Evidence or arguments regarding Microsoft's overall revenues or profits, and such figures from products and services not accused by Motorola, should be excluded. FED. R. EVID. 402, 403.

Microsoft has substantial revenues and profits from many businesses and products having nothing to do with this case – including, for example, Microsoft's Xbox business. Evidence relating to Microsoft's revenues and profits from products and services not accused by Motorola is not only irrelevant, but also highly prejudicial. FED. R. EVID. 402, 403.

M. Other Microsoft Litigation or Judgments. Any litigation, judgment, rulings, consent decrees, charges, or verdicts in other cases involving Microsoft, including but not limited to antitrust litigation and litigation involving patents not at issue in this case, are irrelevant. FED. R. EVID. 402. Those cases involve different issues, patents, technologies, products, claim constructions, infringement allegations, invalidity allegations (including different prior art

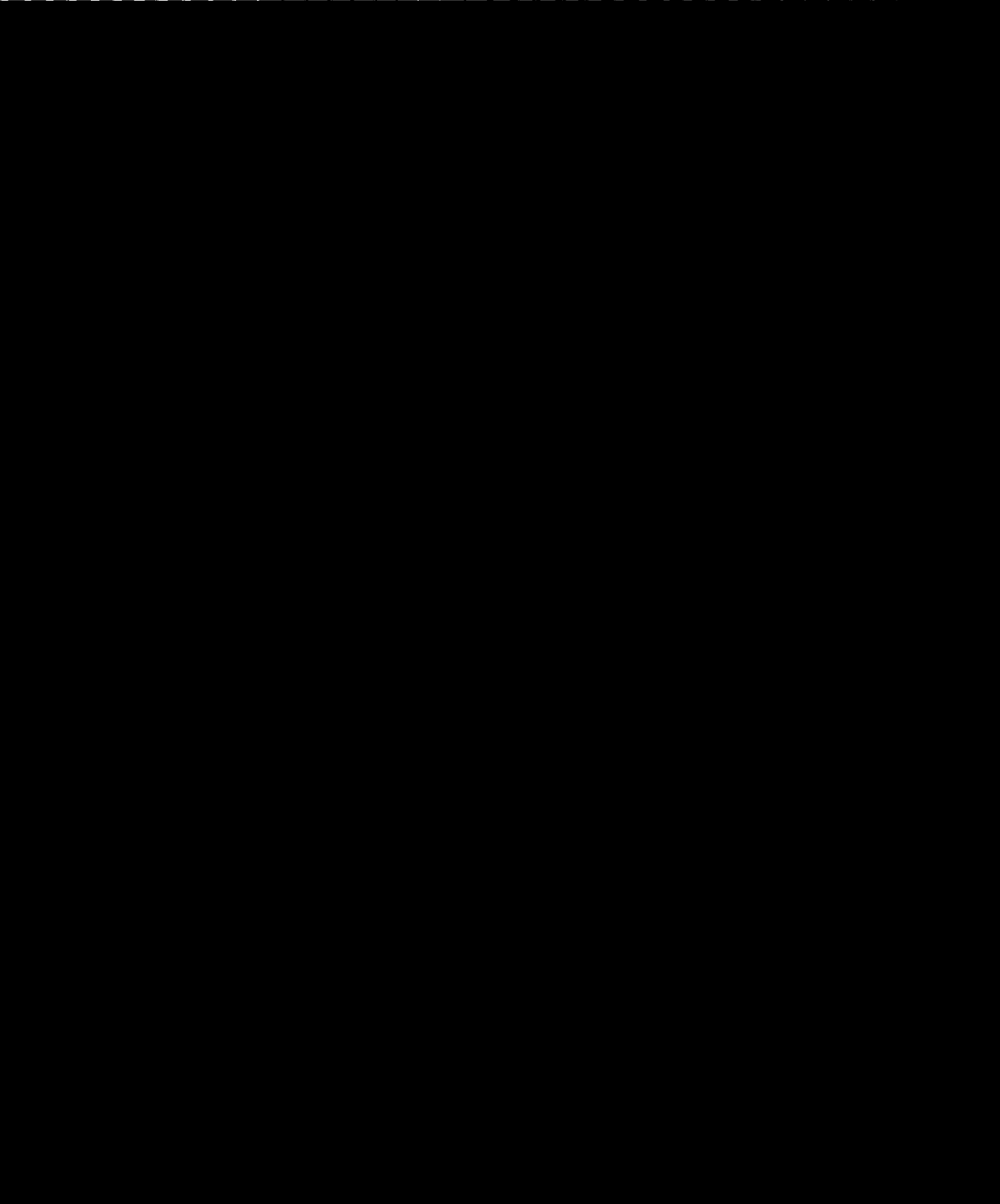
references), and damages theories. Any such evidence therefore would be entirely irrelevant to whether Motorola's patents are infringed or invalid and what, if any, damages are reasonable.

FED. R. EVID. 402. Such evidence should also be excluded because it would be highly prejudicial and unfair to Microsoft, and would pose a serious danger of confusing the issues, misleading the jury, and wasting time. FED. R. EVID. 403.

N. Claims of Privilege. Any reference to Microsoft's claim of attorney-client, work product or any other applicable privilege or immunity in response to any request for information is improper and should be precluded. A claim of privilege is a proper act and should not be commented on by Motorola's counsel or witnesses. No inference should be made from a claim of privilege. Such evidence is irrelevant, would be unfairly prejudicial to Microsoft, and would mislead the jury into resolving this case based on factors other than the evidence and the law. FED. R. EVID. 402, 403.

O. Questioning Seeking to Invoke the Assertion of Privilege. Any questioning calculated to invoke an assertion of attorney-client, work product or any other applicable privilege or immunity would undermine the policies supporting privileges and would confuse the jury and distract from the real issues in this litigation. FED. R. EVID. 402, 403.

P. Pre-Trial and Discovery Rulings. Any reference to any pretrial or discovery ruling made by this Court, excluding those reflecting the Court's claim construction, or the lack of ruling by this Court on any pretrial or discovery issue; or reference to any argument or claims rejected, dismissed, severed or stayed are irrelevant and would prejudice Microsoft. FED. R. EVID. 103(c), 104(a), 403, 605.



R. Alternative Claim Constructions. Any reference to the manner in which the claim construction ruling in this case should be altered or the effect such proposed alterations would

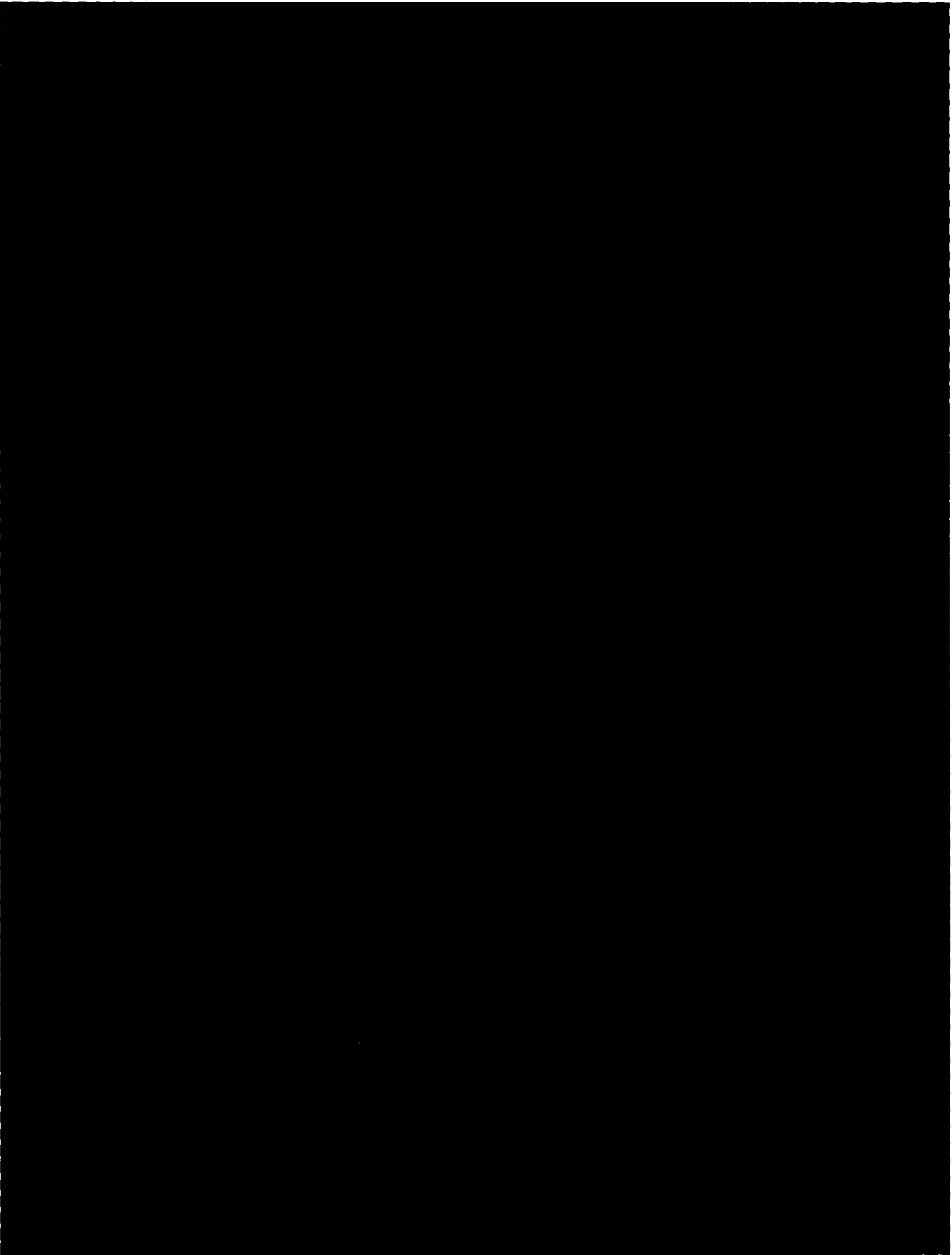
have on any issue in this case and any (including expert) opinion about such proposed alterations should be excluded. The Court will have construed the claims of the patents, and any attempt to change or opine about proposed changes to the claim construction ruling or their effect would be irrelevant and would confuse the jury. FED. R. EVID. 402, 403, 702, 703.

S. Testimony on Improper Claim Constructions. Any reference to or expert testimony asserting patent validity, invalidity, infringement or non-infringement that relies on claim constructions other than those ordered by the Court is irrelevant. Because it will not aid the jury, and is not probative to any issue in the case, the Court should exclude any expert testimony that relies on claim constructions other than those ordered by the Court or which adds limitations not found in the claims. FED. R. EVID. 402, 403, 702, 703.

T. Unasserted Patent Claims. Any reference to any unasserted claims of the Microsoft patents or any infringement claims previously made by Microsoft in this litigation that are no longer asserted or have been resolved would be irrelevant and prejudicial to Microsoft. Thus, the Court should exclude any reference to any unasserted claims or any infringement claims made by Microsoft that are no longer asserted or have been resolved. FED. R. EVID. 403.







W. Expert Testimony Regarding Claim Construction. Motorola should be precluded from introducing any testimony or evidence regarding claim construction. The Court will have construed the claims of the patents, and any attempt to introduce any evidence relating to claim construction would be irrelevant and would confuse the jury. FED. R. EVID. 402, 403, 702, 703.

X. Microsoft's Motions in Limine. Any reference to the fact that Microsoft has filed a Motion *in Limine* requesting relief from this Court or that this Court has granted or denied such relief is irrelevant and would confuse the jury. FED. R. EVID. 402, 403. Any reference to Microsoft's Motions *in Limine* or any relief that might have been granted or denied would so prejudice Microsoft as to deprive Microsoft of a fair trial. FED. R. EVID. 103(c), 403.

**CERTIFICATE OF GOOD FAITH COMPLIANCE**

As required by this Court's Local Rule 7.1(a)(3)(a), counsel for Microsoft certifies that Microsoft has made a good faith effort to consult with counsel for Motorola regarding the issues raised in this motion. The parties, under the circumstances and without the benefit of the actual filings, were unable to agree on any issue in the motion. However, the parties have agreed to continue to discuss the matters forthwith and will notify the Court of any agreements on the issues, including, if necessary, the filing of agreed orders resolving same and/or the withdrawal of any agreed-upon issue in this motion.

DATED this 21st day of July 2011.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

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Curtis B. Miner, Esq.

**SERVICE LIST**

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