

## Exhibit 9

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

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MOTOROLA MOBILITY, INC.,

*Plaintiff,*

v.

MICROSOFT CORPORATION,

*Defendant.*

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MICROSOFT CORPORATION,

*Counterclaim Plaintiff,*

v.

MOTOROLA MOBILITY, INC.,

*Counterclaim Defendant.*

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**EXPERT REPORT OF LOREN G. TERVEEN REGARDING INFRINGEMENT  
OF U.S. PATENT NOS. 6,785,901 AND 6,897,904**

35. Motorola’s proposed construction of “live program content” is not plain and ordinary meaning of the term “program content currently being tuned.” Further, such construction is neither supported by the specification nor the file history of the patent. For example, in discussing the types of content that is provided by a content provider, the ’904 Patent draws a distinction between three different types of program content: (1) “stored content” which is stored by the content provider; (2) “live content” which is defined as “content that was not previously stored by the content provider”; and (3) “content stored at other locations” (*i.e.*, stored content that is stored by an entity other than the content provider). (The ’904 Patent, col. 2, lines 32-42). Microsoft’s proposed construction, on the other hand, comports with the plain and ordinary meaning of the term because it defines what program content is contemplated by the claim language—the program content that is being received by the tuner—rather than where that program content came from (*e.g.*, whether the content was stored by the content provider or is from a live feed).

36. For the claim terms other than “program content currently being tuned” in the ’904 Patent, I used the ordinary and customary meaning for the analysis set forth herein.

## **IX. INFRINGEMENT ANALYSIS**

### **A. The ’901 Patent**

#### **1. The ’901 Accused Devices**

37. The ’901 Accused Devices include Motorola Broadband Media Center set-top boxes with digital video recording (DVR) functionality and parental control functionality, as well as associated software. The ’901 Accused Devices include the BMC9012 and BMC9022D Moxi based set-top boxes and other set-top boxes incorporating hardware and/or software that is substantially similar.

38. The ’901 Accused Devices are set-top boxes having a graphical user interface and providing functions for controlled access by a user to programming content. (*See, e.g.*, Moxi

Viewer's Guide<sup>2</sup> at MS-MOTO\_SDFLA\_00000149277-283, 149286-290, 149304-309; Moxi Media Center User Guide<sup>3</sup> at MS- MS-MOTO\_SDFLA\_00000149176, 149181, 149201-203.) The '901 Accused Devices provide functions for displaying of guide data on a display that describes programming content, such as program title, program start time, program end time and channel. (See, e.g., Moxi Viewers' Guide at MS-MOTO\_SDFLA\_00000149277-283; Moxi Media Center User Guide at MS-MOTO\_SDFLA\_00000149176.) For example:



(Moxi Viewer's Guide at MS-MOTO\_SDFLA\_00000149277.)

39. The '901 Accused Devices also provide functions for recording a show that is currently on or scheduling a recording. (See, e.g., Moxi Viewer's Guide at MS-MOTO\_SDFLA\_0000000000149286-290; Moxi Media Center User Guide at MS-MOTO\_SDFLA\_00000149181.) For example:

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<sup>2</sup> Moxi by digeo Viewer's Guide, Version 3.0, 2004 (MS-MOTO\_SDFLA\_00000149269-321).

<sup>3</sup> Moxi Media Center User Guide, Software Version 4.1, 2006 (MS-MOTO\_SDFLA\_00000149160-268).



172. In sum, it is my opinion that all the limitations in claim 35 are literally present in each of the '901 Accused Device. To the extent that it is found that the '901 Accused Devices do not literally meet any of the elements of claim 35 of the '901 Patent, it is my opinion that the '901 Accused Devices would meet such claim element under the doctrine of equivalents. For each element of claim 35, the '901 Accused Devices perform substantially the same function, in substantially the same way, to achieve substantially the same result as the recited element. To the extent any difference exists at all, any difference between the claimed limitations of the '901 Patent and the '901 Accused Devices is insubstantial.

173. In addition, by making the '901 Accused Devices available, Motorola encourages the users to use the '901 Accused Devices in an infringing manner as described above.

## **B. The '904 Patent**

### **1. The '904 Accused Devices**

174. The '904 Accused Devices include Motorola set-top boxes with digital video recording (DVR) functionality and two or more tuners, as well as associated software. The '904 Accused Devices include the DCT6416, DCH6416 and DCX3400 and other set-top boxes running software version 78.xx or substantially similar software.

218. In sum, it is my opinion that all the limitations in claim 20 are literally present in each of the '904 Accused Device. To the extent that it is found that the '904 Accused Devices do not literally meet any of the elements of claim 20 of the '904 Patent, it is my opinion that the '904 Accused Devices would meet such claim element under the doctrine of equivalents. For each element of claim 20, the '904 Accused Devices perform substantially the same function, in substantially the same way, to achieve substantially the same result as the recited element. To the extent any difference exists at all, any difference between the claimed limitations of the '904 Patent and the '904 Accused Devices is insubstantial.

219. In addition, by making the '904 Accused Devices available, Motorola encourages the users to use the '904 Accused Devices in an infringing manner as described above.

**X. CONCLUSION**

220. Based on the foregoing, it is my opinion that the '901 Accused Devices infringe—either literally or under the doctrine of equivalents—claims 1-3, 5-6, 8-9, 11, 22-23, 25, 27-29, 31, 33 and 35 of the '901 Patent.

221. It is also my opinion that the '904 Accused Devices infringe—either literally or under the doctrine of equivalents—claims 12 and 18-20 of the '904 Patent.

Dated: June 24, 2011

  
Loren G. Terveen