

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

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

MOTOROLA MOBILITY, INC.,

Plaintiff / Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant / Counterclaim Plaintiff.

**JOINT MOTION TO INCLUDE PRETRIAL DATES ON
CLAIM CONSTRUCTION AND EXPERT DISCOVERY**

Motorola Mobility, Inc. (“Motorola Mobility”) and Microsoft Corporation (“Microsoft”) (collectively, the “Parties”) jointly move the Court to include pretrial dates on claim construction and expert discovery. In support of their Motion, the Parties state that:

1. This action involves claims by both Motorola Mobility and Microsoft for patent infringement with respect to various patents.
2. This Court is required to construe the meaning of disputed terms in a patent claim prior to the submission to the jury, called claim construction. Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). The scope and meaning of patent claims are questions of law. When the parties present a fundamental dispute regarding the scope of a claim term, the Court is required to resolve the dispute by determining the meaning of that claim term. Early resolution of such disputes will typically narrow the issues for expert reports, summary judgment and trial.
3. On January 20, 2011, the Court entered an Order Continuing Trial and Certain

Pretrial Dates (DE 36) (“Scheduling Order”).

4. The Scheduling Order does not specifically address deadlines for claim construction briefings. In addition, the Scheduling Order does not specifically address expert discovery.

5. In order to facilitate this Court’s claim construction ruling, the parties have agreed to a schedule that is intended to narrow the issues as much as possible to ensure an efficient claim construction process.

6. The parties also desire to facilitate expert discovery as much as possible.

7. The parties also desire to agree to a schedule to have the claim construction process completed in a timely manner such that the parties can meet the deadlines set forth in the Scheduling Order, including the deadlines for summary judgment and trial.

8. The parties’ proposed schedule does not alter any of the deadlines of the Court’s Scheduling Order with the following minor exception: The Scheduling Order provides a deadline of July 7, 2011, for the Parties to complete discovery. The proposed Scheduling Order adds an expert discovery deadline of July 21, 2011, but maintains July 7, 2011 as the Parties’ last day to complete all fact discovery.

9. The Parties have agreed to the following deadlines with respect to claim construction and expert discovery:

- a. **April 15, 2011: Infringement Contentions** - Parties to make simultaneous exchange of infringement contentions for all patent claims they will be asserting including independent and dependent claims.
- b. **April 22, 2011: Invalidity Contentions** – Parties to make simultaneous exchange of invalidity contentions for all patent claims asserted by the

opposing party, including all grounds of invalidity.

- c. **April 29, 2011: Claim Construction** – List of claim limitations: Parties to make simultaneous exchange of limitations, not to exceed twenty-five (25) per party, exclusive of means plus function claim limitations, that they contend require construction from the Court.
- d. **May 6, 2011: Claim Construction – Proposed constructions/evidence:** Parties to make simultaneous exchange of proposed constructions and supporting evidence for all claim limitations exchanged.
- e. **May 13, 2011: Claim Construction – Meet and Confer -** Last date for the Parties to meet and confer on claim construction issues.
- f. **May 20, 2011: Opening Claim Construction Briefs** – Parties to make simultaneous exchange of opening briefs on claim construction for all claim limitations in dispute;
- g. **May 27, 2011: Responsive Claim Construction Briefs** – Parties to make simultaneous exchange of responsive claim construction briefs for all claim limitations in dispute.
- h. **Week of May 30, 2011: Claim Construction Hearing** – If the Court deems a hearing necessary, parties request that the Court hold a claim construction hearing be held during the week of May 30, 2011, or as soon thereafter as the Court can accommodate.
- i. **June 24, 2011: Opening Expert Reports** – Parties to make simultaneous exchange of expert report information required by the Local Rules of this Court and Orders of this Court on issues on which the Party bears the

burden of proof.

- j. **July 7, 2011: Rebuttal Expert Reports** – Parties to make simultaneous exchange of expert report information required by the Local Rules of this Court and Orders of this Court on rebuttal issues; and
- k. **July 21, 2011: Expert Discovery Completed** – Parties to complete expert discovery.

10. Lead counsel for the Parties are experienced patent counsel and have utilized similar claim construction procedures in the past. They have found such procedures to facilitate the claim construction process for the Court.

11. Accordingly, the Parties request that the Court enter the proposed Scheduling Order Including Pretrial Dates on Claim Construction and Expert Discovery (“Revised Scheduling Order”), attached as **Exhibit “A”** hereto.

12. As noted above, the proposed Revised Scheduling Order does not alter any of the dates and deadlines set forth in the Court’s Order Continuing Trial and Certain Pretrial Dates other than a minor extension of the expert discovery deadline. The Revised Scheduling Order maintains all of those dates and deadlines and adds the dates and deadlines set forth in Paragraph 3 of this Motion.

WHEREFORE, the Parties respectfully request that the Court enter the Revised Scheduling Order attached as Exhibit A to this Motion.

Dated: April 10, 2011

By: /s/ Edward M. Mullins

Edward M. Mullins
Hal M. Lucas
Douglas J. Giuliano
Astigarraga Davis Mullins & Grossman, P.A.
701 Brickell Avenue, 16th Floor
Miami, FL 33131
Telephone: (305) 372-8282
*Attorneys for Plaintiff /
Counterclaim Defendant*
MOTOROLA MOBILITY, INC.

Jesse J. Jenner
Steven Pepe
Khue V. Hoang
Leslie M. Spencer
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10020
Telephone: (212) 596-9000

Norman H. Beamer
Mark D. Rowland
Gabrielle E. Higgins
Ropes & Gray LLP
1900 University Avenue, 6th Floor
East Palo Alto, CA 94303
Telephone: (650) 617-4000

Kevin J. Post
Megan F. Raymond
Ropes & Gray LLP
One Metro Center
700 12th Street NW, Suite 900
Washington, DC 20005
Telephone: (202) 508-4600

Dated: April 10, 2011

By /s/ Curtis Miner

Roberto Martinez
Curtis Miner
COLSON HICKS EIDSON
255 Alhambra Circle, Penthouse
Coral Gables, FL 33134
Telephone: (305) 476-7400
*Attorneys for Defendant /
Counterclaim Plaintiff*
MICROSOFT CORPORATION

David T. Pritikin
Richard A. Cederoth
Douglas I. Lewis
John W. McBride
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
Telephone: (312) 853-7000

Brian R. Nester
Kevin C. Wheeler
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
Telephone: (202) 736-8000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 10, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system, and that the foregoing document is being served this date on all counsel of record via transmission of Notices of Electronic Filing generated by the CM/ECF system.

/s/ Douglas J. Giuliano
Douglas J. Giuliano