

EXHIBIT H

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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

MOTOROLA MOBILITY, INC.,)
)
 Plaintiff/Counterclaim Defendant,)
)
 v.)
)
 MICROSOFT CORPORATION,)
)
 Defendant/Counterclaim Plaintiff.)
)

**PLAINTIFF MOTOROLA MOBILITY, INC.'S NOTICE OF
SUBPOENA TO THIRD PARTY ERIC THOMAS EATON**

PLEASE TAKE NOTICE that pursuant to Rules 30(a)(1), 34(c), and 45 of the Federal Rules of Civil Procedure, Plaintiff Motorola Mobility, Inc. (“Motorola Mobility”) served the subpoena attached as Exhibit 1 on Eric Thomas Eaton.

The documents set forth in Schedule A attached thereto are to be produced on or before June 8, 2011 at 5:00 pm Eastern Time at the offices of Astigarraga Davis Mullins & Grossman, P.A., 701 Brickell Avenue, 16th Floor, Miami, FL 33131.

PLEASE TAKE FURTHER NOTICE that Motorola Mobility, by and through its attorneys Ropes & Gray LLP, will take the deposition upon oral examination of Mr. Eaton on June 14, 2011 at 9:30 am Eastern Time at the office of Astigarraga Davis Mullins & Grossman, P.A., 701 Brickell Avenue, 16th Floor, Miami, FL 33131. The deposition will be recorded by stenographic and/or video means, taken before a Notary Public or other officer authorized by law to administer oaths, and will continue from day to day until completed.

Respectfully submitted,

Dated: May 31, 2011

By: /s/ Leslie M. Spencer

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MOTOROLA MOBILITY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2011, copies of the foregoing Plaintiff Motorola Mobility, Inc.'s Notice Of Subpoena To Third Party Eric Thomas Eaton was served by e-mail upon the counsel of record included in the attached Service List.

/s/ Leslie M. Spencer
Leslie M. Spencer

SERVICE LIST

Motorola Mobility, Inc. v. Microsoft Corp., Case No. 1:10-cv-24063-MORENO

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

MOTOROLA MOBILITY, INC.,

Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

Case 1:10-CV-24063-MORENO¹

(S.D. Fla.)

MICROSOFT CORPORATION,

Defendants.

**TO: Eric Thomas Eaton
3198 Medinah Circle
Lake Worth, FL 33467-1345
Palm Beach County**

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. The deposition will be transcribed; video taped; audio recorded.

PLACE OF DEPOSITION Astigarraga Davis Mullinas & Grossman, P.A. 701 Brickell Avenue, 16th Floor Miami, FL 33131	DATE AND TIME June 14, 2011 9:30 a.m.
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YOU ARE COMMANDED to produce and permit inspection, copying, testing or sampling of the following documents, electronically stored information or objects at the place, date, and time specified below (list documents, electronically stored information or objects): SEE SCHEDULE A ATTACHED HERETO

PLACE Astigarraga Davis Mullinas & Grossman, P.A. Attn: Edward Mullins 701 Brickell Avenue, 16th Floor Miami, FL 33131	DATE AND TIME June 8, 2011 5:00 p.m.
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which a person will testify. Federal Rules of Civil Procedure. 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Attorney for Plaintiff 	DATE Date May 24, 2011
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Leslie M. Spencer Ropes & Gray LLP 1211 Avenue of the Americas New York, New York 10036-8704	TELEPHONE +1 212 596 9000
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(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

¹If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

Date

Place

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct:

Executed on:

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(i).

ATTACHMENT A

INTRODUCTION

For a statement of your obligations in producing documents under this subpoena, see Rule 45(d)(1) and (2) of the Federal Rules of Civil Procedure, which appears on the reverse side of the subpoena.

DEFINITIONS

- a) “’370 Patent” means U.S. Patent No. 6,983,370.
- b) “Named Inventors” refers to Eric Thomas Eaton, David Jeffery Hayes, and Von Alan Mock.
- c) “Patent Counsel” refers to all person who prepared or prosecuted, or assisted in the preparation or prosecution of the ‘370 Patent and Related Patents and Applications thereto, including without limitation Randi L. Karpinia (formerly known as Randi L. Dulaney) (Reg. No. 46,148), Sylvia Chen (Reg. No. 39,633), and other attorneys at Motorola.
- d) “Motorola Mobility” or “Plaintiff” means, collectively and individually, Motorola Mobility, Inc., and all its predecessors or successors (merged, acquired, or otherwise), parents, divisions, subsidiaries, and affiliates thereof, and all officers, agents, employees, counsel and other persons acting on its behalf, or any other person or entity subject to Motorola Mobility’s control, or which controls Motorola Mobility, including but not limited to Motorola, Inc.
- e) “Person” means any natural person or individual, and any and all legal entities, including without limitation, corporations, companies, firms, partnerships, joint ventures, proprietorships, associations, governmental bodies or agencies, or other form of business enterprise.
- f) The terms “and” and “or” are terms of inclusion and not of exclusion and are to be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests any documents or responses which might be otherwise construed to be outside the scope of these requests.
- g) The term “any” includes “all,” and the term “all” includes “any.”
- h) The singular of any term includes the plural of that term, and the plural includes the singular.

i) The term “concerning” means identifying, referring to, concerning, regarding, evidencing, demonstrating, summarizing, reflecting, constituting, containing, embodying, mentioning, pertaining to, commenting upon, connected with, discussing, describing, analyzing, showing, comprising, or relating to in any relevant way to a particular subject, in whole or in part, either directly or indirectly.

j) “Document” shall have the broadest meaning and scope ascribed under Rule 34 of the Federal Rules of Civil Procedure, and include all tangible things which come within the meaning of the terms “writings and recordings,” as used in Federal Rule of Evidence 1001 and all electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term.

k) “Communication” means any transmission, exchange, or transfer of information by any means regardless of content, format and medium.

l) “Identify” or “identity” with respect to a natural person or individual means providing at least the following information for him or her: (a) full name; (b) present address and telephone number, or if not known, last known address and telephone number; (c) current employer; (d) title or position; and (e) employment duties, functions, and/or responsibilities.

m) “Identify” or “identity” with respect to communications means providing the following information: (a) the identity of the person(s) creating such communication; (b) the identity of the recipient(s) of such communication; (c) the date of the communication; and (d) the nature, substance, and contents of the communication.

n) “Application” means any patent application or similar document submitted or filed anywhere in the world, including but not limited to any provisional application, continuing application, continuation-in-part application, divisional application, file-wrapper continuation, reexamination proceeding, reissue application, and abandoned application.

o) “Related Patents and Applications” means any patent or Application submitted or filed anywhere in the world that is related to the ‘370 Patent, including but not limited to any patent or Application that (i) claims priority in whole or in part to or from the ‘370 Patent, (ii) is the basis for a claim of priority in whole or in part for the ‘370 Patent, or (iii) discloses the same subject matter as the ‘370 Patent.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

All documents concerning the conception or reduction to practice of the subject matter of each claim of the '370 Patent, including, without limitation, any engineering notebooks, laboratory notebooks, log books, records books, memoranda, design reviews, progress reports, technical reports, drawings, schematics, specifications, diagrams, computer records, diaries, calendars, test results, invention disclosures, patent prosecution records.

REQUEST FOR PRODUCTION NO. 2

All documents concerning the contribution of each of the Named Inventors to the conception or reduction to practice of the subject matter disclosed in the '370 Patent.

REQUEST FOR PRODUCTION NO. 3

All documents concerning any communications by or among any or all of the Named Inventors, Patent Counsel or other Persons concerning the '370 Patent.

REQUEST FOR PRODUCTION NO. 4

All documents concerning the validity, patentability, enforceability, or scope of any claim of the '370 Patent and any Related Patents and Applications thereto.

REQUEST FOR PRODUCTION NO. 5

All documents concerning any patent application, including any abandoned or pending U.S. or foreign application, relating to the subject matter of the '370 Patent.

REQUEST FOR PRODUCTION NO. 6

All documents created, generated, edited or reviewed by any or all of the Named Inventors of the '370 Patent, or created at the direction of or in conjunction with any work done with or for any or all of the Named Inventors, including without limitation, laboratory notebooks, memoranda and reports, concerning any or part of any embodiment or subject matter described or claimed in the '370 Patent and any Related Patents and Applications thereto.

REQUEST FOR PRODUCTION NO. 7

All documents concerning the design, development, experimentation, testing, method of operation, or manufacture of any product, system or service that embodies, falls within the scope of, or is practiced in accordance with any subject matter disclosed or claimed in the '370 Patent.

REQUEST FOR PRODUCTION NO. 8

All documents concerning any licenses (exclusive or non-exclusive, restricted or non-restricted), purchase agreements, assignments, transfers, joint development agreements, or contracts concerning the '370 Patent and any Related Patents and Applications thereto.

REQUEST FOR PRODUCTION NO. 9

All documents concerning the first sale or first offer for sale of any product, system or service that embodies, falls within the scope of, or is practiced in accordance with any subject matter disclosed or claimed in the '370 Patent.

REQUEST FOR PRODUCTION NO. 10

All documents concerning any demonstration of any product, system or service that embodies, falls within the scope of, or is practiced in accordance with any subject matter disclosed or claimed in the '370 Patent.