

# **EXHIBIT C**

**to**

## **Microsoft's Reply in Support of its Motion to Stay Litigation Pending Reexaminations**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

AMANDA MAY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 5:03cv160
	)	
WACOAL AMERICA, INC. <i>et al.</i> ,	)	(Hon. David Folsom)
	)	
Defendants.	)	

**DEFENDANT WACOAL AMERICA, INC.'S MOTION FOR STAY PENDING REEXAMINATION OF THE PATENT-IN-SUIT BY THE PTO**

**Wacoal America, Inc.**

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**DEFENDANT WACOAL AMERICA, INC.’S MOTION FOR STAY PENDING REEXAMINATION OF THE PATENT-IN-SUIT BY THE PTO**

Defendant Wacoal America, Inc. (“Wacoal”) respectfully requests that the Court stay all proceedings in this action pending the resolution of a reexamination of the patent-in-suit by the United States Patent and Trademark Office (“PTO”).<sup>1</sup>

**I. INTRODUCTION**

On December 8, 2004, Wacoal submitted the ’906 patent for reexamination, which is an official administrative proceeding conducted by PTO for the purpose of determining the validity of an existing patent. One of the main purposes of the reexamination procedure is to conserve the resources of both the federal courts and the parties involved in patent litigation over patents with questionable validity.

With respect to this reexamination proceeding, Wacoal has submitted 13 pieces of prior art which it believes fully invalidate the ’906 patent. If the reexamination procedure invalidates

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<sup>1</sup> BareWeb, Inc., Dillard’s, Inc., Federated Department Stores, The May Department Stores Company, Nordstrom, Inc., Saks Fifth Avenue Texas L.P. and Target Corporation (collectively, the “Retailer Defendants”) also support this request for stay.

**B. In The Alternative, The Court Should At Least Continue The Trial Date For Six Months.**

As discussed above, Plaintiff has recently added eight defendants to this lawsuit. Not one of these defendants has made an appearance, and several of these defendants will be filing motions to dismiss. Moreover, discovery is not complete, and the parties have neither taken depositions nor made expert disclosures. Thus, even if the Court were to find that this case should not be stayed, the Court should at least continue the trial date for a minimum of six months in order for the parties to prepare sufficiently for trial.

**IV. CONCLUSION**

For the foregoing reasons, Defendant Wacoal respectfully requests that the Court enter an Order staying all proceedings in this action, including all claims asserted against Wacoal and the Retailer Defendants, pending the resolution of the PTO's reexamination of the '906 patent or, in the alternative, continue the trial date for at least six months.

Respectfully submitted,

**Wacoal America, Inc.**

Dated: December 16, 2004

By: /s/ Sam Baxter

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