

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

IMMERSION CORPORATION, a
Delaware corporation,

Defendant.

No. 2:07-cv-936RSM

**[PROPOSED] STIPULATED
PROTECTIVE ORDER
REGARDING TREATMENT BY THE
PARTIES OF CONFIDENTIAL
DOCUMENTS**

I. STIPULATIONS

In connection with litigating the parties' respective claims asserted in this action, the parties expect that they will need to exchange documents and other information during discovery regarding non-public, confidential, and sensitive commercial information, including without limitation confidential business, financial, licensing, technical and trade secret information. This information is, by nature, highly confidential and proprietary to each party and deserving of protection regarding use and dissemination. Pursuant to Fed. R. Civ. P. 26(c)(7), the Court has the authority to issue an order that "a trade secret or other

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1 confidential . . . or commercial information not be revealed or be revealed only in a
2 designated way." Accordingly, the parties request that the Court enter as an
3 Order the following Stipulated Protective Order ("Order") which shall govern the
4 use, handling and/or return of documents, depositions, deposition exhibits,
5 interrogatory responses, and other written recorded or graphic material produced
6 during discovery or on a party's own initiative for use in this action, and all copies
7 thereof, and shall govern the use, handling, and/or return of the documents,
8 materials and information.

9 1. Any party, or third party subject to discovery in this action, may
10 designate the information it produces as "Confidential" if it believes, in its good
11 faith judgment, that the material contains confidential, market sensitive or
12 proprietary information, including without limitation financial information, trade
13 secrets, product development information, personnel and payroll information or
14 other commercially sensitive or personally sensitive information of a non-public
15 nature. The party shall make this designation by placing on every document or
16 other material (including portions of deposition transcripts) containing such
17 information the legend "CONFIDENTIAL" (except that in the case of multipage
18 documents, the legend need only be placed on the first page of the document in
19 order for the entire document to be treated as "Confidential") prior to providing
20 such document or other material pursuant to this Order.

21 2. Any party may designate the information it produces as "Attorneys
22 and Consultants Only" if it believes, in good faith judgment, that the material is not
23 generally known to others and has significant competitive value such that
24 unrestricted disclosure to others would create a substantial risk of serious injury,
25 and which the Designating Party (i) would not normally reveal to third parties
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1 except in confidence or has undertaken with others to maintain in confidence, or
2 (ii) believes in good faith is significantly sensitive and protected by a right to
3 privacy under federal or state law or any other applicable privilege or right related
4 to confidentiality or privacy. The party shall make this designation by placing on
5 every document or other material (including portions of deposition transcripts)
6 containing such information the legend "ATTORNEYS AND CONSULTANTS
7 ONLY" (except that in the case of multipage documents, the legend need only be
8 placed on the first page of the document in order for the entire document to be
9 treated as "ATTORNEYS AND CONSULTANTS ONLY") prior to providing such
10 document or other material pursuant to this Order.

11 3. When used in this Order, the word "documents" mean all written,
12 recorded or graphic matter whatsoever, however created and whatever the
13 medium on which it was produced or reproduced, including, but not limited to,
14 documents produced by any party, whether pursuant to Fed. R. Civ. P. 33 or 34,
15 subpoena, or by agreement, and may also include deposition transcripts and
16 exhibits, and any portions of any court papers which quote from or summarize any
17 of the foregoing. When used in this Order, the term "other information" means
18 any portion of any answer or response to any written discovery request.

19 4. All "Confidential" and "Attorneys and Consultants Only" documents
20 and all information contained therein, and any other confidential information, shall
21 be used by the parties to whom the documents are disclosed solely for the
22 prosecution and/or defense of this action, and shall not be further disseminated,
23 except as specifically set forth below.

24 5. Except with prior written consent of the party asserting confidential
25 treatment, or court order, documents designated as "Confidential" and the
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1 information contained therein, and any other confidential information, may be
2 disclosed only to the following persons:

3 (a) counsel for the parties (including attorneys and staff
4 associated with or employed by the legal counsel);

5 (b) five (5) in-house business or legal representatives to whom
6 access to the designated materials is deemed necessary for the prosecution,
7 defense, or settlement of this litigation;

8 (c) court reporters and stenographers employed in connection
9 with this suit;

10 (d) outside consultants and experts employed by counsel of
11 record for the parties; and

12 (e) any witness or deponent at deposition, when such witness or
13 deponent is believed in good faith to be the author or recipient, or otherwise have
14 personal knowledge, of the documents or things designated as "Confidential" or
15 the contents thereof.

16 6. Except with prior written consent of the party asserting confidential
17 treatment, or court order, documents designated as "Attorneys and Consultants
18 Only" and the information contained therein, and any other confidential
19 information, may be disclosed only to the following persons:

20 (a) outside counsel of record for the parties (including attorneys
21 and staff associated with or employed by the outside legal counsel);

22 (b) court reporters and stenographers employed in connection
23 with this suit;

24 (c) outside consultants and experts employed by counsel of
25 record for the parties; and
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1 (d) any witness or deponent at deposition, when such witness or
2 deponent is believed in good faith to be the author or recipient, or otherwise have
3 personal knowledge, of the documents or things designated as "Attorneys and
4 Consultants Only" or the contents thereof.

5 7. Before disclosing "Confidential" documents or information to any
6 person enumerated in paragraphs 5(b) or (e) above or "Attorneys and Consultants
7 Only" documents or information to any person enumerated in paragraphs 6(d)
8 above, counsel for the disclosing party must first inform that person that the
9 information or document to be disclosed contains confidential or proprietary
10 information which must be held in confidence and may be used solely for the
11 purpose of preparing for this litigation or settlement and, further, that these
12 restrictions are imposed by a Stipulated Protective Order signed by the parties
13 and their counsel and entered by the Court. Each person granted access to
14 "Confidential" or "Attorneys and Consultants Only" information shall not reveal or
15 disclose the contents of the confidential or proprietary information for any purpose,
16 including, without limitation, any business, professional, or commercial purpose,
17 other than those relating to this litigation. Each such person shall read this Order
18 or be advised by counsel as to its contents, and shall agree to be bound by its
19 terms by signing Exhibit A, attached hereto.

20 8. It is the obligation of the party producing confidential or proprietary
21 documents to identify specific documents as "Confidential" or "Attorneys and
22 Consultants Only." If the party receiving such documents objects to that
23 identification, and counsel for the parties are unable to resolve the objection
24 informally, the receiving party may file a motion with the Court requesting relief.
25 The burden of persuasion to justify the designation in any such challenge
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1 proceeding shall be on the party asserting the designation. Unless and until the
2 Court issues a ruling allowing disclosure, all materials designated "Confidential" or
3 "Attorneys and Consultants Only" shall remain as designated.

4 9. Upon the production of "Confidential" or "Attorneys and Consultants
5 Only" material from one party to another party, and in the normal course of
6 discovery, the receiving party may seek to depose a witness from the producing
7 party regarding these materials. During such a deposition, only counsel for the
8 parties, party representatives of the producing party, permitted party
9 representatives of the receiving party, expert witnesses or consultants for the
10 parties (if permitted to attend by the rules of civil procedure and/or agreement of
11 the parties), the witness, and the witness's counsel may be present during any
12 portion of the interrogation concerning the material deemed "Confidential" or
13 "Attorneys and Consultants Only" except that party representatives of the
14 receiving party other than counsel may not attend any portion of the deposition
15 during which "Attorneys and Consultants Only" material is being reviewed or
16 discussed. If appropriate, the witness may be asked to review this Order and to
17 sign Exhibit A, attached hereto.

18 10. Deposition transcripts shall be treated as "Attorneys and Consultants
19 Only" for a 21-day period following receipt of the transcript by all parties. Within
20 the 21-day time period, any party may make a preliminary designation of the entire
21 transcript, or portions of the transcript as "Confidential" or "Attorneys and
22 Consultants Only" by page and line number, by providing written notice to all
23 parties. Within 21 days after the day of the deposition, a designating party must
24 make a final designation, listing only those portions of the deposition transcript by
25 page and line that the designating party, in good faith, believes should be
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1 protected.

2 11. Documents containing "Confidential" material or "Attorneys and
3 Consultants Only" material of any party shall not be filed with the Court unless it is
4 necessary to do so for purposes of trial, substantive motions, including without
5 limitation, motions for preliminary injunction or summary judgment, or other Court
6 matters. The parties shall take all reasonable steps to file "Confidential" material
7 and "Attorneys and Consultants Only" material under seal pursuant to FRCP
8 26(c)(7) and Local Rule 5(g).

9 12. Any party including "Confidential" material or "Attorneys and
10 Consultants Only" material in a filing with the Court (whether in pleadings,
11 declarations, exhibits, or otherwise) shall file such material pursuant to Local Rule
12 5(g)(3), and shall contemporaneously with such filing, file a motion to seal any
13 "Confidential" material or "Attorneys and Consultants Only" material included in
14 the filing, regardless of which party designated the materials as such. Such a
15 motion to seal shall be noted for consideration seven (7) judicial days after filing in
16 accordance with Local Rule 7(d). The party filing the motion to seal will within the
17 motion make a good faith effort to show why any materials that it designated as
18 "Confidential" or "Attorneys and Consultants Only" should be sealed pursuant to
19 FRCP 26(c)(7) and Local Rule 5(g). If any documents or information included in
20 the court filing were designated "Confidential" or "Attorneys and Consultants Only"
21 by a non-moving party, that party may file a response in support of the motion to
22 seal no later than three (3) judicial days before the note date showing why such
23 materials should be sealed pursuant to FRCP 26(c)(7) and Local Rule 5(g).

24 13. The Clerk of the Court is directed to maintain under seal all
25 documents and all transcripts of deposition testimony filed with this Court in this
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1 litigation by any party which are, in whole or in part, designated as "Confidential"
2 or "Attorneys and Consultants Only," including all pleadings, deposition
3 transcripts, exhibits, discovery responses or memoranda purporting to reproduce
4 or paraphrase such information, **PROVIDED** that such documents are ordered
5 sealed by the Court or are the subject of a pending motion to seal. The party filing
6 such material shall designate to the Clerk that all or a designated portion thereof is
7 subject to this Order and is to be kept under seal. A complete, unredacted set of
8 documents filed under seal shall be provided by the filing party to opposing
9 counsel the same day the documents are filed.

10 14. In the event the Court denies a motion to seal documents containing
11 either "Confidential" material or "Attorneys and Consultants Only" material, the
12 Clerk of the Court shall remove the documents subject to the motion to seal from
13 the Court file and such documents shall not be considered by the Court. In this
14 situation, not later than three (3) judicial days after the date of the Court's denial of
15 a motion to seal, the filing party may, at its option, (a) file replacement documents
16 that do not contain either "Confidential" material or "Attorneys and Consultants
17 Only" material, which shall be considered by the Court, or (b) inform the Clerk of
18 the Court that it may return to the Court file the documents which had been
19 previously removed and allow such documents to be considered by the Court and
20 to become part of the public Court record.

21 15. In the event that any "Confidential" material or "Attorneys and
22 Consultants Only" material is used in any court proceeding in connection with this
23 litigation, it shall not lose its "Confidential" or "Attorneys and Consultants Only"
24 status through such use, and the parties shall take all steps reasonably required to
25 protect its confidentiality during such use.
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1 16. At the conclusion of the litigation of this action, or upon settlement or
2 dismissal, documents or other information designated as confidential, and all
3 copies of such documents or other information (other than exhibits of record),
4 shall be returned, within 30 days, to the source from which they were produced or
5 at the direction of the producing party, or destroyed with the party destroying the
6 documents providing a certificate of destruction to the producing party.

7 17. In the event additional parties join this action they shall not have
8 access to "Confidential" and "Attorneys and Consultants Only" material until each
9 newly joined party by its counsel has executed and filed with the Court its
10 agreement to be fully bound by this Order.

11 18. The inadvertent production of a confidential document without the
12 "Confidential" or "Attorneys and Consultants Only" identifier shall not waive the
13 confidential nature of that document and does not alter the confidential or
14 proprietary nature of any other "Confidential" or "Attorneys and Consultants Only"
15 documents. Upon discovery that a confidential document has been produced
16 without the "Confidential" or "Attorneys and Consultants Only" identifier, the
17 producing party shall promptly notify the other parties, in writing, and shall request
18 that all parties treat the document in accordance with this Order. Such other
19 parties may challenge the confidentiality designation in accordance with
20 Paragraph 8, supra.

21 19. The undersigned parties and counsel shall keep material identified
22 as "Confidential" or "Attorneys and Consultants Only" in a secure and segregated
23 location, shall not disclose those documents, and shall not use or disclose them
24 other than as authorized by this Order. The undersigned parties and counsel
25 understand that this Order continues after the conclusion of this litigation.
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1 20. In the event of a violation of this Order, the party injured by the
2 violation shall be entitled, in addition to any other rights and remedies it may have
3 at law or in equity, to have an injunction issued by the Court, or any court of
4 competent jurisdiction, enjoining the party violating this Order (and/or any third
5 party involved in the violation) from continuing such violation.

6 21. To expedite the production of information, parties may inadvertently
7 produce documents that are privileged or otherwise immune from discovery.
8 Inadvertent production of privileged documents shall not be deemed a waiver of
9 any applicable privilege. If a party unintentionally discloses documents or material
10 that is privileged or otherwise immune from discovery, the party shall, within seven
11 (7) business days upon discovery of the disclosure, so advise in writing the party
12 to whom the materials were produced, request the documents or material be
13 returned or destroyed, and attach a privilege log with an entry pertaining to the
14 documents or material that is privileged or otherwise immune from discovery. If
15 that request is made and the privilege log provided, no party to this action shall
16 thereafter assert on this basis that the disclosure waived any privilege or
17 immunity. It is further agreed that the receiving party will return or certify the
18 destruction of the inadvertently produced documents or material, and all copies
19 and derivations, within two (2) business days of the receiving party's receipt of a
20 written request for the return of the documents or material. The receiving party
21 having returned the inadvertently produced documents or material may thereafter
22 seek production of the documents or material in accordance with the Federal
23 Rules of Civil Procedure. To the extent that any such inadvertently produced
24 material has been used, included, referenced or summarized in a pleading,
25 deposition or other proceeding, nothing in this paragraph shall require a receiving
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party to purge, redact or excise any such information that has been used in good faith before a request for the return of the unintentionally produced material.

22. Entry of this Order is without prejudice to the right of any party to seek a protective order imposing additional restrictions upon discovery of confidential information or documents, including but not limited to an order that production thereof not be made.

DATED this 22nd day of May, 2008.

RIDDELL WILLIAMS P.S.

By Paul J. Kundtz, WSBA #13548
Blake Marks-Dias, WSBA #28169
Wendy E. Lyon, WSBA #34461
 Attorneys for Plaintiff MICROSOFT CORPORATION

BYRNES & KELLER LLP

By /s/
 Bradley S. Keller, WSBA #10665
 Jofrey M. McWilliam, WSBA #28441
 Attorneys for Defendant IMMERSION CORPORATION

IRELL & MANELLA LLP

By /s/
Richard M. Birnholz
Morgan Chu
Alan J. Heinrich
David R. Kaplan
Pro Hac Vice Attorneys for Defendant IMMERSION
CORPORATION

EXHIBIT A

ACKNOWLEDGMENT REGARDING CONFIDENTIAL INFORMATION

The undersigned hereby acknowledges that:

1. I have read and understand the terms of the Stipulated Protective Order ("Order").

2. I hereby agree to be bound by the Order's terms with respect to any documents, material, or information marked "Confidential" or "Attorneys and Consultants Only" that are furnished to me as set forth in the Order.

3. I hereby agree not to disclose to anyone any documents, material or information marked "Confidential" or "Attorneys and Consultants Only" other than as permitted by the Order.

4. I hereby consent to the jurisdiction of the United States District Court for the Western District of Washington with regard to any proceedings to enforce the terms of the Order.

5. I hereby agree that any documents, materials or information marked "Confidential" or "Attorneys and Consultants Only" furnished to me will be used by me only for the purposes of this litigation and for no other purpose and will not be used by me in any business affairs of my employer or of my own or be imparted by me to any other person.

6. I declare under penalty of perjury that the foregoing is true and correct.

[signature block on following page]

1 DATED this _____ day of _____, 2008.

2
3 _____
4 Name

5 _____
6 Title or Position

7 _____
8 Telephone Number
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1 II. ORDER

2
3 The Court hereby orders as stipulated by the parties above.

4 DATED this _____ day of _____, 2008

5
6
7
8 HONORABLE RICARDO S. MARTINEZ

9 Presented By:

10 RIDDELL WILLIAMS P.S.

11
12 By: _____ /s/
13 Paul J. Kundtz, WSBA #13548
14 Blake Marks-Dias, WSBA #28169
15 Wendy E. Lyon, WSBA #34461
16 Attorneys for Plaintiff MICROSOFT CORPORATION
17 BYRNES & KELLER LLP

18 By _____ /s/
19 Bradley S. Keller, WSBA #10665
20 Jofrey M. McWilliam, WSBA #28441
21 Attorneys for Defendant IMMERSION CORPORATION
22 IRELL & MANELLA LLP

23 By _____ /s/
24 Richard M. Birnholz
25 Morgan Chu
26 Alan J. Heinrich
David R. Kaplan
Pro Hac Vice Attorneys for Defendant IMMERSION CORPORATION

CERTIFICATE OF SERVICE

The undersigned certifies that on the date noted below, I electronically filed the foregoing document titled **[PROPOSED] STIPULATED PROTECTIVE ORDER REGARDING TREATMENT BY THE PARTIES OF CONFIDENTIAL DOCUMENTS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Executed at Seattle, Washington this 22nd day of May, 2008.



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