

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

MICROSOFT CORPORATION, a Washington ) No. CV07 936RSM  
corporation, )

Plaintiff, )

v. )

IMMERSION CORPORATION, a Delaware )  
corporation, )

Defendant. )

**DECLARATION OF ALAN J. HEINRICH  
IN SUPPORT OF IMMERSION'S  
OPPOSITION TO MICROSOFT  
CORPORATION'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT ON  
BREACH OF CONTRACT**

) Note On Motion Calendar: July 25, 2008  
) Oral Argument Requested

1 I, Alan Heinrich, declare as follows:

2 1. I am an attorney at Irell & Manella LLP, co-counsel of record for defendant  
3 Immersion Corporation (“Immersion”) in the above-captioned action. I am a member in good  
4 standing of the California State Bar and am admitted to practice before this Court in this case *pro*  
5 *hac vice*. I have personal knowledge of the facts set forth in this Declaration and, if called as a  
6 witness, could and would testify competently to such facts under oath.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the  
8 deposition transcript of Kenneth Lustig, whose deposition was taken on April 30, 2008.

9 3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the  
10 deposition transcript of Barry Spector, whose deposition was taken on April 15, 2008.

11 4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the  
12 deposition transcript of Victor Viegas, whose deposition was taken on May 22, 2008.

13 5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the  
14 deposition transcript of Patrick Reutens, whose deposition was taken on March 24, 2008.

15 6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the  
16 deposition transcript of Lisa Jean Tanzi, whose deposition was taken on June 13, 2008.

17 7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the  
18 deposition transcript of Jennifer Liu, whose deposition was taken on December 20, 2007 and  
19 January 23, 2008.

20 8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the  
21 deposition transcript of Richard Birnholz, whose deposition was taken on June 5, 2008.

22 9. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from the  
23 deposition transcript of Steve McGrath, whose deposition was taken on June 16, 2008.

24 10. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from the  
25 deposition transcript of Martin Smith whose deposition was taken on May 20, 2008.  
26

1           11.     Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the  
2 deposition transcript of Marc Brown, whose deposition was taken on April 11, 2008.

3           12.     Attached hereto as Exhibit 11 is a true and correct copy of excerpts from the  
4 deposition transcript of Alan Gordon, whose deposition was taken on June 11, 2008.

5           13.     Attached hereto as Exhibit 12 is a true and correct copy of excerpts from the  
6 deposition transcript of Charles A. Laff, whose deposition was taken on June 9, 2008.

7           14.     Attached hereto as Exhibit 13 is a document Bates-stamped MS 5364 – MS 5380,  
8 produced during discovery in this action. It is a true and correct copy of a Sublicense Agreement  
9 by and between Microsoft Corporation (“Microsoft”) and Immersion dated July 25, 2003.

10          15.     Attached hereto as Exhibit 14 is a document Bates-stamped MS 5330 – MS 5349,  
11 produced during discovery in this action. It is a true and correct copy of a Settlement Agreement  
12 and Mutual Release between Microsoft Corporation and Immersion Corporation, dated July 25,  
13 2003.

14          16.     Attached hereto as Exhibit 15 is a document Bates-stamped IMRMS 5304 –  
15 IMRMS 5317, produced during discovery in this action. It is a true and correct copy of a  
16 License Agreement between Microsoft Corporation and Immersion Corporation, dated July 25,  
17 2003.

18          17.     Attached hereto as Exhibit 16 is a document Bates-stamped MS 5173 – MS 5199,  
19 produced during discovery in this action. It is a true and correct copy of a Series A Redeemable  
20 Convertible Preferred Stock Purchase Agreement between Immersion Corporation and Microsoft  
21 Corporation, dated July 25, 2003.

22          18.     Attached hereto as Exhibit 17 is a document Bates-stamped MS 5444 – MS 5473,  
23 produced during discovery in this action. It is a true and correct copy of a Senior Redeemable  
24 Convertible Debenture Purchase Agreement between Immersion Corporation and Microsoft  
25 Corporation dated July 25, 2003.

26

1           19. Attached hereto as Exhibit 18 is a document Bates-stamped MS 10743, produced  
2 during discovery in this action. It is a true and correct copy of a computer print out regarding  
3 sales by Microsoft of Immersion stock.

4           20. Attached hereto as Exhibit 19 is a document Bates-stamped IMRMS 3949 –  
5 IMRMS 3950, produced during discovery in this action. It is a true and correct copy of an email  
6 from Victor Vargas to Patrick Ruetens dated July 17, 2003 attaching an article entitled  
7 "Microsoft Has Double Reverse in InterTrust Case."

8           21. Attached hereto as Exhibit 20 is a document Bates-stamped IMRMS 3941,  
9 produced during discovery in this action. It is a true and correct copy of an newspaper article  
10 entitled "Microsoft's Patent Problem."

11           22. Attached hereto as Exhibit 21 is a document Bates-stamped IMRMS 4391 –  
12 IMRMS 4393, produced during discovery in this action. is a true and correct copy of an article  
13 entitled "Sony vs. Microsoft: Showdown In the Digital Rights Corral" dated January 9, 2003.

14           23. Attached hereto as Exhibit 22 is a document Bates-stamped MS 5046 – MS 5064,  
15 produced during discovery in this action. It is a true and correct copy of a July 5, 2003 email  
16 from Marc Brown to Patrick Reutens, with attachment.

17           24. Attached hereto as Exhibit 23 is a document Bates-stamped MS 5065 – MS 5096,  
18 produced during discovery in this action. It is a true and correct copy of a July 9, 2003 email  
19 from Patrick Reutens to Kara Nortman and Steve McGrath, with attachment.

20           25. Attached hereto as Exhibit 24 is a document Bates-stamped IMRMS 533 –  
21 IMRMS 548, produced during discovery in this action. It is a true and correct copy of a Jury  
22 Verdict Form dated September 21, 2004 in the action in the United States District Court for the  
23 Northern District of California entitled Immersion Corporation v. Sony Computer Entertainment  
24 of America, Inc. and Sony Computer Entertainment Inc., Northern District of California Case  
25 No. C 02-00710 CW (WDB).  
26

1           26. Attached hereto as Exhibit 25 is a document Bates-stamped MS 8089 – MS 8090,  
2 produced during discovery in this action. It is a true and correct copy of an Amended Judgment  
3 dated April 7 , 2005 in the action in the United States District Court for the Northern District of  
4 California entitled Immersion Corporation v. Sony Computer Entertainment of America, Inc. and  
5 Sony Computer Entertainment Inc., Northern District of California Case No. C 02-00710 CW  
6 (WDB).

7           27. Attached hereto as Exhibit 26 is a documents Bates-stamped SCEA 1418 – SCEA  
8 1442. It is a true and correct copy of Order Denying Parties' Motions for Judgment as a Matter  
9 of Law and Addressing Other Matters dated January 10, 2005 in the action in the United States  
10 District Court for the Northern District of California entitled Immersion Corporation v. Sony  
11 Computer Entertainment of America, Inc. and Sony Computer Entertainment Inc., Northern  
12 District of California Case No. C 02-00710 CW (WDB).

13           28. Attached hereto as Exhibit 27 is a documents Bates-stamped SCEA 1413 – 1415.  
14 It is a true and correct copy of Order Entering Permanent Injunction and Granting Defendants'  
15 Motion to Stay Injunction Pending Appeal dated March 24, 2005 in the action in the United  
16 States District Court for the Northern District of California entitled Immersion Corporation v.  
17 Sony Computer Entertainment of America, Inc. and Sony Computer Entertainment Inc.,  
18 Northern District of California Case No. C 02-00710 CW (WDB).

19           29. Attached hereto as Exhibit 28 is a document Bates-stamped IMRMS 3808-  
20 through IMRMS 3812, produced during discovery in this action. It is a true and correct copy of  
21 a decision from the United States Patent and Trademark Office signed by Kenneth M. Schor,  
22 mailed June 5, 2007.

23           30. Attached hereto as Exhibit 29 is a true and correct copy of a press release entitled  
24 "SCE Announces New Controller for Playstation 3" dated May 8, 2003.

25           31. Attached hereto as Exhibit 30 is a document Bates-stamped IMRMS 4205 –  
26 IMRMS 4230, produced during discovery in this action. It is a true and correct copy an

1 Agreement between Sony Computer Entertainment America Inc. and Sony Computer  
2 Entertainment Inc. and Immersion Corporation executed on or about February 28, 2007.

3 32. Attached hereto as Exhibit 31 is a true and correct copy of a Notice of Withdrawal  
4 of Appeals and Consented to Motion to Dismiss By Appellant Sony Computer Entertainment  
5 Inc. and Sony Computer Entertainment America Inc. dated March 1, 2007, in the action in the  
6 United States Court of Appeals for the Federal Circuit entitled Immersion Corporation v. Sony  
7 Computer Entertainment of America, Inc. and Sony Computer Entertainment Inc. v. Internet  
8 Services, LLC, Appeal Nos. 05-1227, -1441.

9 33. Attached hereto as Exhibit 32 is a document Bates-stamped IMRMS 565 –  
10 IMRMS 566, produced during discovery in this action. It is a true and correct copy of an Order  
11 dated March 14, 2007 in the action in the United States Court of Appeals for the Federal Circuit  
12 entitled Immersion Corporation v. Sony Computer Entertainment of America, Inc. and Sony  
13 Computer Entertainment Inc. v. Internet Services, LLC, Appeal Nos. 05-1227, -1441.

14 34. Attached hereto as Exhibit 33 is a document Bates-stamped SCEA 39 – SCEA 46,  
15 produced during discovery in this action. It is a true and correct copy of Litigation Escrow  
16 Agreement between Immersion Corporation, Sony Computer American Inc. and Sony Computer  
17 Entertainment Inc., and JP Morgan Chase Bank N.A. dated January 6, 2006.

18 35. Attached hereto as Exhibit 34 is a document Bates-stamped SCEA 14 – SCEA  
19 25, produced during discovery in this action. It is a true and correct copy of a March 14, 2007  
20 email from Daniel Herp to Glenn Sturman attaching an document entitled Agreement and  
21 Escrow Instructions.

22 36. Attached hereto as Exhibit 35 is a true and correct copy of a check from Sony  
23 Computer Entertainment America Inc. made payable to the order of Immersion Corporation  
24 dated March 20, 2007.

1           37. Attached hereto as Exhibit 36 is a true and correct copy excerpts from Immersion  
2 Corporation's Response to Microsoft Corporation's First Set of Interrogatories and Requests for  
3 Production of Documents dated October 11, 2007.

4           38. Attached hereto as Exhibit 37 is a document Bates-stamped IMRMS 68 through  
5 IMRMS 69, produced during discovery in this action. It is a true and correct copy of a Notice of  
6 Satisfaction of Final Judgment dated March 19, 2007 in the action in the United States District  
7 Court for the Northern District of California entitled Immersion Corporation v. Sony Computer  
8 Entertainment of America, Inc. and Sony Computer Entertainment Inc., Northern District of  
9 California Case No. C 02-00710 CW (WDB).

10           39. Attached hereto as Exhibit 38 is a document Bates-stamped IMRMS 561 through  
11 IMRMS 562, produced during discovery in this action. It is a true and correct copy of a  
12 Stipulation and Order Dissolving Permanent Injunction dated March 19, 2007 in the action in the  
13 United States District Court for the Northern District of California entitled Immersion  
14 Corporation v. Sony Computer Entertainment of America, Inc. and Sony Computer  
15 Entertainment Inc., Northern District of California Case No. C 02-00710 CW (WDB).

16           40. Attached hereto as Exhibit 39 is a document Bates-stamped MS 5200 – MS 5213,  
17 produced during discovery in this action. It is a true and correct copy of Certificate of  
18 Designation of the Powers, Preferences and Rights of Series A Redeemable Convertible  
19 Preferred Stock in Immersion Corporation.

20           41. Attached hereto as Exhibit 40 is a document Bates-stamped MS 5474 – MS 5488,  
21 produced during discovery in this action. It is a true and correct copy of a form 7% Senior  
22 Redeemable Convertible Debenture of Immersion Corporation.

23           42. Attached hereto as Exhibit 41 is a document Bates-stamped MS 2606 – MS 2622,  
24 produced during discovery in this action. It is a true and correct copy of an email from Mary  
25 Smith to Patrick Reutens dated July 18, 2003, with attachments.  
26

1 43. Attached hereto as Exhibit 42 is a true and correct copy of the Expert Report of  
2 Alan Gordon dated April 17, 2008 in this action.

3 44. Attached hereto as Exhibit 43 is a document Bates-stamped MS 10644 – MS  
4 10669, produced during discovery in this action. It is a true and correct copy of an email from  
5 Lisa Tanzi to Peter Toto and Kara Stoll dated July 16, 2005, with attachments.

6 45. Attached hereto as Exhibit 44 is a true and correct copy of excerpts from the  
7 deposition transcript of Stephen Ambler, whose deposition was taken on June 12, 2008.

8 46. Attached hereto as Exhibit 45 is a document Bates-stamped IMRMS 5071 –  
9 IMRMS 5097, produced during discovery in this action. It is a true and correct copy of an email  
10 from Patrick Reutens to Richard Birnholz, Stacy Snowman, James Koshlan, David Leeb, and  
11 Ben Griebe dated July 16, 2003, with attachments.

12 47. Attached hereto as Exhibit 46 is a document Bates-stamped IMRMS 10948,  
13 produced during discovery in this action. It is a true and correct copy of a document provided to  
14 Immersion in connection with Immersion's prior patent lawsuit against Microsoft.

15  
16 Executed on July 17, 2008, at Los Angeles, California.

17 By /s/ Alan J. Heinrich  
18 Alan J. Heinrich



1 **CERTIFICATE OF SERVICE**

2 The undersigned attorney certifies that on the 17<sup>th</sup> day of July, 2008, I electronically filed  
3 the foregoing with the Clerk of the Court using the CM/ECF system which will send notification  
4 of such filing to the following:

5 Paul J. Kundtz (pkundtz@riddellwilliams.com)  
6 Blake Marks-Dias (bmarksdias@riddellwilliams.com)  
7 Wendy E. Lyon (wlyon@riddellwilliams.com)  
8 Riddell Williams P.S.  
9 1001 Fourth Avenue Plaza, Suite 4500  
10 Seattle, WA 98154-3600  
11 *Attorneys for Plaintiff*

12 /s/ David R. Kaplan  
13 David R. Kaplan  
14 Irell & Manella LLP  
15 1800 Avenue of the Stars, Suite 900  
16 Los Angeles, CA 90067-4276  
17 Telephone: (310) 277-1010  
18 Facsimile: (310) 203-7199

19 Byrnes & Keller LLP  
20 1000 Second Avenue, 38th Floor  
21 Seattle, WA 98104  
22 Telephone: (206) 622-2000  
23 Facsimile: (206) 622-2522

24 *Attorneys for Defendant Immersion Corporation*