

The 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

**SUPPLEMENTAL DECLARATION OF
WENDY E. LYON IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
ON BREACH OF CONTRACT**

Noted for Consideration: July 25, 2008
Oral Argument Requested

I, Wendy E. Lyon, declare as follows:

1. I am one of the attorneys in the law firm of Riddell Williams, P.S., counsel for Plaintiff Microsoft Corporation. I make this declaration based on personal knowledge.
2. Attached as Exhibit A is a true and correct copy of excerpts of the deposition of Patrick Reutens taken on 3/24/08. [FILED UNDER SEAL]
3. Attached as Exhibit B is a true and correct copy of excerpts of the deposition of Victor Viegas taken on 5/22/08. [FILED UNDER SEAL]
4. Attached as Exhibit C is a true and correct copy of excerpts of the deposition of Martin Smith taken on 5/20/08. [FILED UNDER SEAL]

SUPP. DECL. OF LYON IN SUPPORT OF PLNTF'S MOT. FOR PART.
SUMM. JUDGMNT ON BREACH (No. 2:07-CV-936RSM)- 1
4820-0691-0466.01
072508/0929/20363.00411

Riddell Williams p.s.
1001 FOURTH AVENUE
SUITE 4500
SEATTLE, WA 98154-1192
206.624.3600

1 5. Attached as Exhibit D is a true and correct copy of excerpts of the deposition
2 of Alan Gordon taken on 6/11/08. [FILED UNDER SEAL]

3 6. Attached as Exhibit E are true and correct copies of excerpts of the
4 depositions of Barry Spector taken on 4/15/08 and Marc Brown taken on 4/11/08.
5 Immersion cites part of this testimony to argue that Microsoft admits that settlement is
6 different from satisfying a judgment. However, taken in context, it is clear that Marc
7 Brown did not agree that the definition of "Settlement" in the proposed consulting
8 agreement included payment on a verdict, while the ordinary meaning did not. For
9 example, when asked if the ordinary definition would not encompass payment on a verdict,
10 he testified, "If you ask me what the ordinary course definition of the word "settlement"
11 would be, it would be the -- the ending of the litigation, in whatever manner." Brown
12 Dep., 59:15-23; and see generally pages 57-63. Similarly, Immersion quotes Barry Spector
13 as agreeing that a settlement is different than a satisfaction of a judgment. However, this
14 quote taken in context makes clear that the parties understood that settlement included,
15 among other things, payment of a judgment. Spector Dep., 38-48. [FILED UNDER
16 SEAL.]

17 7. Section 17.8 of the treatise Negotiation and Settlement by Eugene F. Lynch,
18 et al. (2005) makes it clear that there are many different ways to settle a case and to draft
19 settlement agreements. It reads in part:

20 "Creative negotiators have devised many different ways to
21 settle disputes."

22 "Flexibility of negotiated settlement is one of its strengths.
23 "No single 'right-way' exists to structure any agreement—
24 you may incorporate aspects of many different formulas into
a single agreement. Every problem is unique and you should
individually tailor every settlement agreement."

25 "Any type of agreement is appropriate if it serves the
26 interests of your client. The terms of the agreement itself
depend largely on desires of the parties, creativity of the
attorneys and complexity of the case."

1 CERTIFICATE OF SERVICE

2 I, Margaret R. Friedmann, declare as follows:

3 I am over 18 years of age and a citizen of the United States. I am employed as a
4 legal secretary by the law firm of Riddell Williams P.S.

5 On the date noted below, I electronically filed the foregoing document titled

6 **SUPPLEMENTAL DECLARATION OF WENDY E. LYON IN SUPPORT OF**
7 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON**
8 **BREACH OF CONTRACT [Exhibits A-F filed under seal]**


9 with the Clerk of the Court using the CM/ECF system which will send notification of such
10 filing to the following counsel for Immersion Corporation:

11 Bradley S. Keller
12 Jofrey M. McWilliam
13 Email: bkeller@byrneskeller.com
14 jmcwilliam@byrneskeller.com

15 Richard M. Birnholz
16 Morgan Chu
17 Alan J. Heinrich
18 David R. Kaplan
19 Email: rbirnholz@irell.com
20 mchu@irell.com
21 aheinrich@irell.com
22 dkaplan@irell.com

23 I declare under penalty of perjury under the laws of the State of Washington that the
24 foregoing is true and correct.

25 Executed at Seattle, Washington this 25th day of July, 2008.

26 

Margaret R. Friedmann
Legal Secretary, Riddell Williams P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
Phone: (206) 624-3600
Fax: (206) 389-1708
Email: mfriedmann@riddellwilliams.com