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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

v.

IMMERSION CORPORATION, a  
Delaware corporation,

Defendant.

NO. CV7-936RSM

**JOINT STATUS REPORT AND  
DISCOVERY PLAN**

Pursuant to FRCP 26(f) and Local Rule CR 16, counsel for all parties provide this Joint Status Report and Discovery Plan to the court:

1. Nature and Complexity of the Case

This is a breach of contract case. Microsoft's Statement

On February 11, 2002, Immersion filed a lawsuit against Microsoft and Sony in the Northern District of California, alleging that the defendants violated certain patents held by Immersion pertaining to forced feedback technology used in computer games. As part of a settlement between Microsoft and Immersion in that case, Immersion and Microsoft entered into a Sublicense Agreement, which provided *inter alia* that "in the event Immersion elects in its discretion to settle the

1 Sony Lawsuit . . . , Immersion would owe Microsoft certain sums. After Immersion  
2 obtained a verdict against Sony and while the case was on appeal before the  
3 Ninth Circuit, Immersion and Sony entered into an agreement, providing Sony  
4 with licenses for the Immersion technology, paying Immersion \$22.5 million, and  
5 permanently releasing an injunction entered in the Sony lawsuit. Sony paid the  
6 outstanding judgment of approximately \$92 million and stipulated to the dismissal  
7 of the appeal. Microsoft alleges that Immersion breached their Sublicense  
8 Agreement by (1) failing to make payments to Microsoft following Immersion's  
9 settlement with Sony; and (2) by violating the covenant of good faith and fair  
10 dealing by actively attempting to characterize its agreement with Sony as  
11 something other than a settlement. Immersion denies these allegations and also  
12 asserts a number of affirmative defenses.

#### 13 Immersion's Statement

14 Microsoft's statement of the case does not fairly characterize the terms of  
15 the Microsoft-Immersion Sublicense Agreement or the Immersion-Sony  
16 agreement, and as a result does not present an accurate summary of the nature  
17 of this case. The Microsoft-Immersion Sublicense Agreement provided *inter alia*  
18 that "in the event Immersion elects in its discretion to settle the Sony Lawsuit prior  
19 to Microsoft's granting Sony a Game Platform Sublicense," then Immersion would  
20 pay Microsoft an amount determined as set forth in the Sublicense Agreement.  
21 The Sublicense Agreement defines the "Sony Lawsuit" as "the action in the  
22 United States District Court for the Northern District of California entitled  
23 Immersion Corporation v. Sony Computer Entertainment of America, Inc., Sony  
24 Computer Entertainment Inc., and Microsoft Corporation, Northern District of  
25 California Case No. C02-00710 CW (WDB), as such action pertains to Sony."

26 The Sony Lawsuit proceeded to final judgment in favor of Immersion, a judgment

1 Sony satisfied in full. Microsoft alleges that, under the Sublicense Agreement, it  
2 is owed a share of the proceeds Immersion received from the satisfaction of the  
3 final judgment against Sony, along with a share of other court-ordered payments  
4 to Immersion. Immersion denies Microsoft's allegations and also asserts a  
5 number of affirmative defenses.

6 Immersion has filed a counterclaim against Microsoft for breaching a  
7 Nondisclosure Agreement between Immersion and Microsoft by publicly  
8 disclosing confidential information in an Agreement between Immersion and Sony.  
9 Microsoft denies the counterclaim.

10 2. ADR Method

11 The parties prefer mediation before a mediator to be selected by  
12 agreement of the parties.

13 3. Mediation Scheduling

14 The parties are considering early mediation in this case. If early mediation  
15 does not occur or is not successful, the parties suggest that mediation be  
16 scheduled at some other appropriate time during the course of pre-trial  
17 proceedings.

18 4. Additional Parties

19 Neither Plaintiff nor Defendant intends to add any additional parties.

20 5. Proposed Discovery Plan

21 (a) Rule 26(f) conference and Rule 26(a) Initial Disclosures

22 The parties held an initial FRCP 26(f) conference on September 10, 2007.  
23 The parties exchanged their initial disclosures on October 25, 2007, pursuant to  
24 the Court's order of September 20, 2007.

1 (b) Discovery Subjects

2 Discovery will focus on the nature, meaning and circumstances  
3 surrounding the Microsoft/Immersion Sublicense Agreement, Nondisclosure  
4 Agreement and other agreements, the Immersion/Sony Agreement, Microsoft's  
5 and Immersion's alleged damages, and Immersion's defenses and Counterclaim.

6 (c) Discovery Limitations

7 Microsoft's Statement

8 Microsoft proposes the following change to the court rules regarding  
9 discovery: Each party may conduct one deposition that shall be limited to two  
10 days and seven hours per day. This is consistent with King County Local Rule  
11 26(d)(2). Microsoft believes that this minor change is necessary because (1) one  
12 of Immersion's witnesses, its CEO, is a critical witness who was the leading  
13 negotiator in two sets of complex transactions at issue in this case, and he has  
14 knowledge on all issues in the case, which will require at least two days of  
15 deposition to cover, (2) the amount in controversy is substantial, more than \$27.5  
16 million, and (3) Immersion and its counsel are experienced with commercial  
17 litigation and capable of responding to one two day deposition.

18 Immersion's Statement

19 Immersion proposes no changes to the court rules regarding discovery at  
20 this time. Immersion opposes Microsoft's proposal to conduct a two day, fourteen  
21 hour deposition of Immersion's CEO as contrary to the Federal Rules of Civil  
22 Procedure, premature and harassing. Microsoft's reliance on the Local Rules of  
23 the Superior Court for King County is misplaced. Naturally, the applicable rules of  
24 procedure are the Federal Rules of Civil Procedure, including the presumptive  
25 durational limit for depositions set forth in Rule 30. Fed. R. Civ. P. 30(d)(2).

26 Moreover, the person that Microsoft has requested to depose at double length is

1 Immersion's CEO. Microsoft has not made the requisite showing of why fourteen  
2 hours of deposition time with Immersion's CEO "is needed for a fair examination  
3 of the deponent." *Id.* If, after conducting a seven-hour deposition, Microsoft  
4 believes in good faith that it needs additional time with the witness, Microsoft can  
5 at that point meet and confer and both the parties and the Court will be in a better  
6 position to determine what is appropriate under the circumstances. It is not,  
7 however, necessary at this time, in advance, to require the CEO of a public  
8 company to sit for up to fourteen hours of deposition time.

9 (d) Managing discovery

10 The parties agree to manage discovery issues in order to minimize the  
11 necessary expense and time needed to complete discovery, including working to  
12 informally schedule depositions.

13 The parties have agreed to preserve all relevant materials, including  
14 electronically stored information ("ESI"). ESI will be produced in the following  
15 format: Data (beginning and ending bates number and body text) in delimited  
16 format with single page group TIFF images on CD-Rom, de-duplicated and  
17 without metadata intact. The parties preserve the option to later request metadata  
18 for particular documents, if such metadata is relevant and not privileged.

19 (e) Protective Orders

20 This case involves sensitive trade secret and confidential business  
21 information. The parties will prepare and present for the Court's approval an  
22 agreed protective order.

23 6. Completion of Discovery

24 Microsoft believes that discovery can be completed by March 1. Immersion  
25 believes that the completion of discovery will take at least until June 30, 2008.

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7. Referral to Magistrate Judge

The parties do not agree to referral of this matter to a magistrate judge.

8. Bifurcation

The parties do not see a need for bifurcation of the action.

9. Pretrial Order

The parties propose that the pretrial order require the listing of witnesses and exhibits that the parties expect to present at trial, but not include the requirement that all contentions of the parties be set forth in the pretrial order.

10. Other Suggestions

The parties have no other suggestions at this time for the disposition of the case.

11. Trial Date

Microsoft requests that trial be scheduled for June, 2008 because this case was filed in June of 2007 and one year is sufficient time to prepare this case for trial. Immersion believes that a trial date in January, 2009 is more realistic in light of the likely length of pre-trial proceedings and that the parties are in the early stages of exchanging documents and discovery.

12. Jury Trial

This matter will be tried to a jury.

13. Length of Trial

The parties estimate that the trial will extend about 7-10 days.

14. Trial counsel

The plaintiff's lead trial counsel is expected to be Paul J. Kundtz of Riddell Williams P.S., Seattle, Washington. Defendant's lead trial counsel is expected to

1 be Morgan Chu of Irell & Manella LLP, Los Angeles, California and Bradley S.  
2 Keller of Byrnes and Keller LLP, Seattle, Washington.

3 15. Service of Process

4 Service of process has been completed and is not challenged.

5 16. Further Scheduling Conference

6 The parties do not request a further scheduling conference at this time.

7 DATED this 36<sup>th</sup> day of October, 2007.

8 RIDDELL WILLIAMS P.S.

9 By 

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19 CORPORATION

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 31<sup>st</sup> day of October, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel for Immersion Corporation:

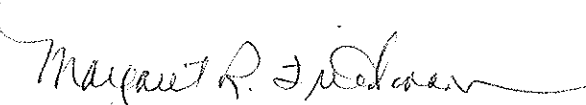
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as well as others on the CM/ECF notification list for this case.

Executed at Seattle, Washington this 31<sup>st</sup> day of October, 2007.



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