

1 The Hon. Ricardo S. Martinez

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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON

10 MICROSOFT CORPORATION, a
11 Washington corporation,

12 Plaintiff,

13 v.

14 IMMERSION CORPORATION, a
15 Delaware corporation,

16 Defendant.

NO. CV7-0936RSM

**MICROSOFT'S REPLY IN
SUPPORT OF ITS MOTION TO
LIMIT SPEAKING OBJECTIONS**

**Noted on Motion Calendar:
May 2, 2008**

Without Oral Argument

17 Immersion does not object to the Court entering Microsoft's proposed order
18 limiting speaking objections and therefore the Court can do so immediately..

19 Immersion incorrectly states that this motion was not necessary and that if
20 Microsoft had asked Immersion to comply with the proposed order it would have.
21 However, during the depositions Microsoft's counsel repeatedly asked
22 Immersion's counsel to not make speaking objections and to limit his objections to
23 privilege, form and foundation. (Excerpts of Videotaped Depositions of Laura A.
24 Peter, taken March 21, 2008 and Patrick Reutens, taken March 24, 2008,
25 attached as Ex. A to the Declaration of Wendy E. Lyon in Support of Microsoft's
26 Reply in Support of Its Motion to Limit Speaking Objections, filed under seal.) He

MICROSOFT'S REPLY IN SUPPORT OF ITS MOTION TO LIMIT
SPEAKING OBJECTIONS (No. CV7-936RSM) - 1
4848-3123-3794.01
050208/1354/20363.00411

Riddell Williams p.s.
1001 FOURTH AVENUE
SUITE 4500
SEATTLE, WA 98154-1192
206.624.3800

1 did not alter his conduct. An order is necessary to prevent this conduct from
2 continuing.

3 Immersion incorrectly asserts that the its counsel, Mr. Birnholz, has acted
4 appropriately during depositions, by making objections in most cases, only to
5 protect attorney client or work product privilege. The record submitted by
6 Microsoft reveals that in fact Immersion's counsel Mr. Birnholz made numerous
7 objections which directed the witness how to answer a question, corrected a
8 witness's answer, alerted a witness to particular questions, and interpreted
9 questions for the witness, and generally sought to improperly coach the witness.
10 The vast majority of these instances did not involve issues of privilege. In the few
11 instances where he was concerned about privilege, he should have objected on
12 the basis of privilege and instructed the witness not to answer. Fed. R. Civ. P.
13 30(d)(1). He may not answer for her, interpret the question, direct her only to use
14 certain words, or otherwise comment on the question.

15 Immersion next asserts that any other objections were made to merely
16 "clear up confusion." This too is not a proper basis for objections. Fed. R. Civ. P.
17 30(d)(1). The examples cited by Microsoft demonstrate that Mr. Birnholz, who
18 may be a witness himself in this case, is blurring the lines between defending a
19 deposition and testifying himself. Immersion states that his objections have not
20 disrupted the depositions because the depositions have lasted less than seven
21 hours and because there are more questions that were not objected to than were.
22 Neither of those measures is the standard for proper behavior in a deposition and
23 in any event miss the point of Microsoft's motion. Microsoft is primarily concerned
24 that Mr. Birnholz is interfering with the witnesses' testimony by coaching them
25 through his speaking objections.

1 Immersion next argues that if its counsel has made speaking objections,
2 that should be excused because counsel for Microsoft has also made speaking
3 objections. There is little or no comparison. The few examples of Microsoft's
4 minimal deposition objections did not suggest how the witnesses should answer,
5 and are well within the rules and the proposed order. On the other hand, Mr.
6 Birnholz's objections have interfered with and influenced the witnesses' testimony
7 Nevertheless, Immersion's accusations do not provide a basis for not entering the
8 requested order, because the proposed order applies equally to both parties.

9 Microsoft requests that the Court enter its proposed order to help facilitate
10 the remaining discovery in this case.

11 DATED May 2, 2008.

12 RIDDELL WILLIAMS P.S.

13
14 By s/Wendy E. Lyon
15 Paul J. Kundtz, WSBA #13548
16 pkundtz@riddellwilliams.com
17 Blake Marks-Dias, WSBA #28169
18 bmarksdias@riddellwilliams.com
19 Wendy E. Lyon, WSBA #34461
20 wlyon@riddellwilliams.com
21 Phone: (206) 624-3600; Fax: (206) 389-1708
22 Attorneys for Plaintiff Microsoft Corporation
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1 CERTIFICATE OF SERVICE

2 I, Margaret Friedmann, declare as follows:

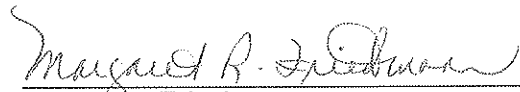
3 I am over 18 years of age and a citizen of the United States. I am
4 employed as a legal secretary by the law firm of Riddell Williams P.S.

5 On the date noted below, I electronically filed the foregoing document
6 entitled **MICROSOFT'S REPLY IN SUPPORT OF ITS MOTION TO LIMIT**
7 **SPEAKING OBJECTIONS** with the Clerk of the Court using the CM/ECF system
8 which will send notification of such filing to the following counsel for Immersion
9 Corporation, as well as others on the CM/ECF notification list:

10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	Bradley S. Keller Jofrey M. McWilliam Byrnes & Keller LLP 1000 Second Avenue, 38 th Floor Seattle, WA 98104-4082 Phone: (206) 622-2000 Fax: (206) 622-2522 Email: bkeller@byrneskeller.com jmcwilliam@byrneskeller.com	Richard M. Birnholz Morgan Chu Irell & Manella LLP 1800 Avenue of the Stars, Suite 900 Los Angeles, CA 90067-4276 Phone: (310) 277-1010 Fax: (301) 203-7199 Email: rbirnholz@irell.com mchu@irell.com
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15 I declare under penalty of perjury under the laws of the State of
16 Washington that the foregoing is true and correct.

17 Executed at Seattle, Washington this 2nd day of May, 2008.

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19 
20 Margaret Friedmann
21 Legal Secretary, Riddell Williams P.S.
22 1001 Fourth Avenue Plaza, Suite 4500
23 Seattle, WA 98154
24 Phone: (206) 624-3600
25 Fax: (206) 389-1708
26 email: mfriedmann@riddellwilliams.com