

1 The Honorable Ricardo S. Martinez

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6 **UNITED STATES DISTRICT COURT**
7 **FOR THE WESTERN DISTRICT OF WASHINGTON**
8 **AT SEATTLE**

9 MICROSOFT CORPORATION,

10 Plaintiff,

11 v.

12 MOTOROLA, INC., and
13 MOTOROLA MOBILITY, INC.,

14 Defendants.

CASE NO. C10-01577-RSM

STIPULATION AND [PROPOSED]
ORDER TO STAY ACTION

Note on Motion Calendar:
November 8, 2010

15 **STIPULATION**

16 Plaintiff Microsoft Corporation and Defendants Motorola, Inc., and Motorola Mobility,
17 Inc., collectively (“the Parties”), by and through their respective counsel of record, hereby
18 stipulate and agree as follows:

19 1. Pursuant to 28 U.S.C. § 1659, the Parties stipulate to a stay of proceedings in the
20 above-captioned matter pending a final determination of the United States International Trade
21 Commission (“ITC”) in *In the Matter of Certain Mobile Devices, Associated Software, and*
22 *Components Thereof*, Investigation No. 337-TA-744.

23 2. On October 1, 2010, Plaintiff Microsoft Corporation (“Microsoft”) filed a
24 Complaint in this matter. Five days later, on October 6, 2010, Microsoft filed an Amended
25 Complaint, which added Motorola Mobility, Inc. (“Motorola Mobility”) as a defendant. Microsoft
26 served its Amended Complaint on Motorola, Inc. (“Motorola”) on October 8, 2010 and on

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1 Motorola Mobility on October 28, 2010. In a Stipulation filed on October 27, 2010, the Parties
2 agreed that Motorola and Motorola Mobility’s deadline to answer or otherwise move the Court for
3 relief in this action should be extended from October 29, 2010 to November 22, 2010. The Court
4 so Ordered this extension on November 1, 2010. ECF No. 32.

5 3. The Amended Complaint alleges that Motorola and Motorola Mobility have
6 infringed, either directly or indirectly, nine Microsoft patents: U.S. Patent Nos. 5,579,517;
7 5,758,352; 6,621,746; 6,826,762; 6,909,910; 7,644,376; 5,665,133; 6,578,054; and 6,370,566. *See*
8 Amended Complaint, ¶¶ 11-12, 14-15, 17-18, 20-21, 23-24, 26-27, 29-30, 32-33, and 35-36. The
9 same day Microsoft filed its initial Complaint in this action—October 1, 2010—it also filed a
10 Complaint with the ITC against Motorola and in connection with the same nine Microsoft patents,
11 asserting that Motorola has infringed these patents and has therefore engaged in unfair competition
12 or violated Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

13 4. Eleven days later, on October 12, 2010, Microsoft amended its ITC Complaint to
14 add Motorola Mobility as a respondent. On November 1, 2010, the ITC instituted an investigation
15 based on the Amended Complaint and formally named Motorola and Motorola Mobility as
16 respondents. Thus, at present, Motorola and Motorola Mobility are both defendants in this civil
17 action and respondents in the ITC proceeding.

18 5. 28 U.S.C. § 1659(a) provides that “[i]n a civil action involving parties that are also
19 parties to a proceeding before the [ITC] under section 337 of the Tariff Act of 1930, at the request
20 of a party to the civil action that is also a respondent in the proceeding before the Commission, the
21 district court *shall stay*, until the determination of the Commission becomes final, proceedings in
22 the civil action with respect to any claim that involves the same issues involved in the proceeding
23 before the commission,” so long as “such request is made within (1) 30 days after the party is
24 named as a respondent in the proceeding before the Commission, or (2) 30 days after the district
25 court action is filed, whichever is later.” 28 U.S.C. § 1659(a) (emphasis added). Motorola and
26 Motorola Mobility are parties to the above-captioned civil action and also the respondents in *In the*

1 *Matter of Certain Mobile Devices, Associated Software, and Components Thereof*, an ITC
2 proceeding involving the same issues involved here—the putative infringement of nine Microsoft
3 patents.

4 6. This requested stipulation is timely. The 30-day period under 28 U.S.C.
5 § 1659(a)(1) did not begin to run until November 1, 2010—the day Motorola and Motorola
6 Mobility were “named as [] respondent[s] in the proceeding before the Commission.” 28 U.S.C.
7 § 1659(a)(1); *see* 19 C.F.R. § 210.3 (defining “respondent” as “any person named in a notice of
8 investigation”).

9 7. Accordingly, the Parties respectfully request that the Court enter an Order directing
10 that:

11 A. Pursuant to 28 U.S.C. § 1659(a) *et seq.* and the Court’s inherent power to
12 control its docket, this civil action is stayed until a final determination of the ITC proceeding in *In*
13 *the Matter of Certain Mobile Devices, Associated Software, and Components Thereof*,
14 Investigation No. 337-TA-744;

15 B. The deadline for Motorola and Motorola Mobility to move, answer, or
16 otherwise respond to the Amended Complaint is vacated; and

17 C. Within 30 days of a final determination of the ITC proceeding in *In the*
18 *Matter of Certain Mobile Devices, Associated Software, and Components Thereof*, Investigation
19 No. 337-TA-744, and the associated expiration of this stay, the Parties shall confer with each other
20 and contact the Court for purposes of setting a Scheduling Order, which shall include the setting of
21 a new deadline for Motorola and Motorola Mobility to move, answer, or otherwise respond to
22 Microsoft’s Amended Complaint.

1 DATED this 8th day of November, 2010.

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1 **ORDER**

2 IT IS SO ORDERED.

3 DATED this ____ day of _____, 2010.

5 THE HONORABLE RICARDO S. MARTINEZ
6 UNITED STATES DISTRICT COURT JUDGE

7 ***Presented by:***

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