UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PRINCETON DIGITAL IMAGE
CORPORATION,

     Petitioner,

     v.

MICROSOFT CORPORATION,

     Respondent.

NO.

[Original action pending in U.S. District Court for the Eastern District of Texas, PDIC v. Canon, Case No. 2:10-cv-29 JRG]

**DECLARATION OF JEFFREY S. POLLACK PURSUANT TO CR 37(a)(1)(A) IN SUPPORT OF PRINCETON DIGITAL IMAGE CORPORATION'S MOTION TO COMPEL MICROSOFT CORPORATION TO RESPOND TO SUBPOENA**

**NOTE ON CALENDAR:**
**January 13, 2012**

I, Jeffrey S. Pollack, of full age, hereby declare, under penalty of perjury:

1.     I am over twenty-one (21) years of age, have never been convicted of a crime involving moral turpitude, and am competent to give this Declaration. I am a member in good standing of the bars of the Commonwealth of Pennsylvania and the State of New Jersey, and am licensed to practice in those states.

2.     I submit this declaration in support of Princeton Digital Image Corporation's ("PDIC") Motion to Compel Microsoft Corporation ("Microsoft") to Respond to Subpoena.

DECLARATION OF JEFFREY S. POLLACK IN SUPPORT OF
PRINCETON DIGITAL IMAGE CORPORATION'S MOTION
TO COMPEL - 1
No.

3. On September 27, 2011, PDIC served Microsoft with a subpoena seeking to discover information relevant to PDIC's claims in the litigation captioned *Princeton Digital Image Corporation v. Cannon, Inc., et al.*, No. 10-00029, currently pending before the Eastern District of Texas (the "Underlying Litigation"). A true and correct copy of PDIC's subpoena is attached as Exhibit "A."

4. Microsoft served its objections to PDIC's subpoena on October 11, 2011, refusing to produce any of the documents requested by PDIC and refusing to testify regarding any of the deposition topics noticed by PDIC. A true and correct copy of Microsoft's Objections to PDIC's Subpoena is attached as Exhibit "B."

5. On October 31, 2011, PDIC requested a meet-and-confer with Microsoft to address and resolve Microsoft's objections. *See* Letter from Jeffrey S. Pollack to Jesse J. Camacho dated October 31, 2011, a copy of which is attached as Exhibit "C."

6. On November 7, 2011, I personally conferred with counsel for Microsoft, Jesse J. Camacho, via telephone regarding Microsoft's objections to PDIC's subpoena.

7. Following that conversation, I sent Mr. Camacho a letter dated November 14, 2011 in which PDIC sought to address Microsoft's objections. *See* Letter from Jeffrey S. Pollack to Jesse J. Camacho dated November 14, 2011, a copy of which is attached as Exhibit "D."

8. With that letter, PDIC sent Microsoft a proposed Protective Order addressing Microsoft's purported concerns regarding the production of confidential information. Microsoft has not objected to the proposed Protective Order.

9. Additionally, to address Microsoft's objections related to burden, PDIC agreed to withdraw three document requests – Requests 2, 5, and 8 – pending the receipt of discovery from Hewlett-Packard Company ("HP"), a defendant in the Underlying Litigation. PDIC also agreed to narrow other requests. At Microsoft's insistence, PDIC limited the relevant time frame under its subpoena from 2004-2008 to January 1, 2004 – December 8, 2007. And where PDIC's document requests sought "all documents" or "any and all documents," PDIC agreed to

DECLARATION OF JEFFREY S. POLLACK IN SUPPORT OF
PRINCETON DIGITAL IMAGE CORPORATION'S MOTION
TO COMPEL - 2
No.

limit its request to "documents sufficient to identify" or "documents sufficient to refer to or reflect" the information sought.

10.     PDIC also agreed to narrow the scope of its document requests seeking source code and other technical documents regarding Microsoft's products.  As drafted, PDIC's subpoena sought information regarding software products that Microsoft made and provided or sold to HP during the relevant timeframe that incorporated the functionality to encode data into a JPEG file format and/or the functionality to decode JPEG files.  Even though Microsoft made the software products at issue and should know which of those products perform the functionality described by PDIC's subpoena, Microsoft objected to producing source code and technical documents unless PDIC first identified the specific products for which it sought source code and technical documents.  Without waiving its right to demand full compliance with its subpoena, and with imperfect knowledge of Microsoft's entire suite of products and which products Microsoft sold or provided to HP, PDIC agreed to limit the scope of its subpoena to just seven products for which it sought source code and technical documents: (i) Microsoft Word; (ii) Microsoft PowerPoint; (iii) Microsoft Paint; (iv) Windows Photo View; (v) Microsoft Office; (vi) Windows Media Center; and (vii) Microsoft Excel.

11.     Despite PDIC's concessions and offers to compromise to address Microsoft's objections to PDIC's subpoena, Microsoft continues to object to producing any documents or testifying in response to PDIC's subpoena.  A full month after PDIC and Microsoft met and conferred via telephone, Microsoft asserted, for the first time, that it would not even consider responding to PDIC's subpoena because the Underlying Litigation had purportedly been stayed.  *See* Email dated December 7, 2011 from Jesse J. Camacho to Jeffrey S. Pollack, a copy of which is attached as Exhibit "E."

12.     Microsoft's new assertion regarding the purported staying of the Underlying Litigation is incorrect.  The Underlying Litigation has not been stayed.  Rather, the Court-ordered deadlines in the Underlying Litigation have merely been suspended pending the final

DECLARATION OF JEFFREY S. POLLACK IN SUPPORT OF
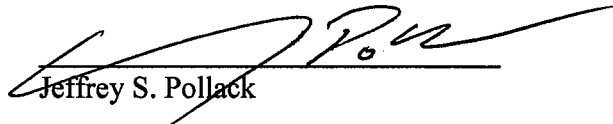PRINCETON DIGITAL IMAGE CORPORATION'S MOTION
TO COMPEL - 3
No.

disposition of a Motion to Transfer Venue. *See* October 13, 2011 Order, a copy of which is attached to the Pollack Decl. as Exhibit "F."

13.     Accordingly, the parties in the Underlying Litigation have continued to conduct discovery, as evidenced by the fact that PDIC recently conducted the deposition of Defendant Xerox International Partners on December 1, 2011 – almost two months after the October 13, 2011 Order was entered.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 29, 2011.

Jeffrey S. Pollack

DECLARATION OF JEFFREY S. POLLACK IN SUPPORT OF
PRINCETON DIGITAL IMAGE CORPORATION'S MOTION
TO COMPEL - 4
No.

SAVITT BRUCE & WILLEY LLP
1425 Fourth Avenue Suite 800
Seattle, Washington 98101-2272
(206) 749-0500

# EXHIBIT
# "A"

202225.1

# UNITED STATES DISTRICT COURT
## WESTERN DISTRICT OF WASHINGTON AT SEATTLE

**Princeton Digital Image Corporation,**

Plaintiff(s),

No. **2:10cv29–TJW**

vs.

AFFIDAVIT OF SERVICE

**Canon, Inc., et al.,,**

Defendant(s),

_____/

ss.

The undersigned, being first duly sworn on oath deposes and says: That he/she is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

That on the **26th September, 2011** at **03:33 PM**, at the address of **925 4th Ave #1900, Seattle,** within **KING** County, **WA,** the undersigned duly served the following document(s): **Subpoena in a Civil Case and Check for $53.26** in the above entitled action upon **Microsoft Corporation,** by then and there personally delivering a true and correct copy(ies) of the above documents into the hands of and leaving same with **Joseph F. Frassrand, Vice President of PTSGE Corp., Registered Agent** who is authorized to accept service on behalf of the above.

**Desc: Sex: Male – Age: 50's – Skin: White – Hair: Gray – Height: 5' 11" – Weight: Medium Build.**

Date: **9.27.11**

Service Fee: $ _____
Return Fee: $ _____
Mileage Fee: $ _____
Misc. Fee: $ _____
Total Fee: $ _____

**J. Waymire**
Process Server
Easy–Serve
1201 Louisiana St, #210
Houston, TX 77002
713–655–7239

Subscribed and sworn to before me this 2011
_____ day of _____, _____.

_____
Notary Public in and for the
State of Washington
My commission expires **06-07-12**

AO88 (Rev. 12/06) Subpoena in a Civil Case

## Issued by the
# UNITED STATES DISTRICT COURT

Western _____  DISTRICT OF _____  Washington

Princeton Digitial Image Corporation

V.

Canon, Inc. et al

### SUBPOENA IN A CIVIL CASE

Case Number:[1] 2:10cv29-TJW [E.D. TEX.]

TO: Microsoft Corporation
Attn: Custodian of Records
One Microsoft Way
Redmond, WA 98052

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

| PLACE OF TESTIMONY | COURTROOM |
|---|---|
| | DATE AND TIME |

☑ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. The deposition will be recorded by videotape and stenographic means. Please see attached Schedule B.

| PLACE OF DEPOSITION Premiere Realtime Litigation Services, 2200 Sixth Avenue., Suite 425 Seattle, WA 98121 | DATE AND TIME 10/28/2011 9:00 am |
|---|---|

☑ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see attached Schedule A.

| PLACE Premiere Realtime Litigation Services, 2200 Sixth Avenue., Suite 425 Seattle, WA 98121 | DATE AND TIME 10/12/2011 9:00 am |
|---|---|

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

| PREMISES | DATE AND TIME |
|---|---|

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

| ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) | DATE 9/26/2011 |
|---|---|

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Wesley W. Yuan, Duane Morris, 1330 Post Oak Blvd., Suite 800, Houston, Texas 77056
Phone: (713) 402-3900 email: wwyuan@duanemorris.com

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

[1] If action is pending in district other than district of issuance, state district under case number.

## PROOF OF SERVICE

| | DATE | PLACE |
|---|---|---|
| SERVED | | |

| SERVED ON (PRINT NAME) | MANNER OF SERVICE |
|---|---|
| | |

| SERVED BY (PRINT NAME) | ~~AFFIDAVIT~~ TITLE |
|---|---|

# ATTACHED

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

_____

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

# DEFINITIONS FOR SCHEDULES A & B

1.      "Microsoft," "you," and "your" mean Microsoft Corporation and any of its present or former parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, and joint ventures and all past or present officers, directors, partners, principals, employees, representatives, agents, consultants, accountants, attorneys, and all other persons acting or purporting to act on behalf of any of the foregoing.

2.      "Princeton Digital" and "PDIC" means Princeton Digital Image Corporation and any of its present or former parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, and joint ventures and all past or present officers, directors, partners, principals, employees, representatives, agents, consultants, accountants, attorneys, and all other persons acting or purporting to act on behalf of any of the foregoing.

3.      "Princeton Digital Image Compression" means Princeton Digital Image Compression, LLC and any of its present or former parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, and joint ventures and all past or present officers, directors, partners, principals, employees, representatives, agents, consultants, accountants, attorneys, and all other persons acting or purporting to act on behalf of any of the foregoing.

4.      "HP" means Hewlett-Packard Company and any of its present or former parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, and joint ventures and all past or present officers, directors, partners, principals, employees, representatives, agents, consultants, accountants, attorneys, and all other persons acting or purporting to act on behalf of any of the foregoing.

5.      "Person" means any natural person or any business, legal or governmental entity or association.

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6.    The "'056 Patent" means U.S. Patent No. 4,813,056, issued March 14, 1989 and entitled "Modified Statistical Coding of Digital Signals."

7.    The "'103 Patent" means U.S. Patent No. 4,860,103, issued August 22, 1989 and entitled "Video Level Control."

8.    "Patents-in-Suit" means the '056 Patent and the '103 Patent.

9.    "JPEG" means Joint Photographic Experts Group.

10.    "JPEG Software Product" means any software product that incorporates the functionality to encode data into a JPEG file format and/or the functionality to decode JPEG files, including without limitation the Microsoft Scanner and Camera Wizard and any and all Microsoft software applications and Microsoft operating systems.

11.    "Relate," "refer," "relating," and "referring" mean, without limitation, directly or indirectly reflecting, concerning, involving, evidencing, pertaining to, consisting of, or containing information about the person, entity, or subject matter at issue.

12.    The terms "Document" and "Document(s)" shall have the broadest meaning ascribed thereto by Rule 34( a) of the Federal Rules of Civil Procedure and mean any writing of any kind, including originals and all non-identical copies (whether different from the original by reason of any notation made on such copies or otherwise). The terms "Document" and "Document(s)" shall include, without limitation, the following items, whether printed or reproduced by any process, or written or produced by hand or stored in computer memory, magnetic or hard disk or other data storage medium, and whether or not claimed to be privileged, confidential or otherwise excludable from discovery, namely, notes, letters, correspondence, communications, e-mails, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or meetings, diaries, reports,

laboratory and research reports and notebooks, recorded experiments, charts, plans, drawings, diagrams, schematic diagrams, HDL, verilog, or other computer code, illustrations, product descriptions, product analyses, requests for proposals, documents related to proposed or actual product improvements or changes, users manuals or guides, installation guides or manuals, technical descriptions or specifications, product repair manuals or guides, photographs, video image, software flow charts or descriptions or specifications, product functional descriptions or specifications, minutes or records of meetings, summaries of interviews, reports, or investigations, opinions or reports of consultants, reports of patent searches, patent appraisals, opinions of counsel, agreements, reports or summaries of negotiations, brochures, pamphlets, advertisements, circulars, trade letters, press releases, drafts of documents, and all other material fixed in a tangible medium of whatever kind known to you or in your possession, custody, or control.

13. The terms "Thing" and "Thing(s)" mean and include any tangible item other than a Document.

14. "Meeting" or "meetings" means the contemporaneous presence, whether in person or by telephone or videoconference, of any natural persons, whether or not such presence was by chance or prearranged and whether or not the meeting was formal, informal or occurred in connection with some other activity.

15. The use of any definition in this attachment is not an agreement or acknowledgement that such definition is accurate, meaningful, or appropriate for any other purpose in this action.

# INSTRUCTIONS FOR SCHEDULES A & B

1.     The terms of this subpoena shall be interpreted so that (i) the terms "all" and "each" shall be construed as all and each; (ii) the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the subpoena all responses that might otherwise be construed to be outside of its scope; and (iii) the use of the singular form of a word includes the plural and vice versa.

2.     All documents shall be produced in accordance with Federal Rules of Civil Procedure 26(b)(5) and 45.

3.     All documents must be produced in their entirety, including without limitation all attachments and enclosures, and in their original folder, binder or other cover or container. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label of such cover or other container must be attached to the document or group of documents.

4.     If any documents subpoenaed were at one time in existence but are no longer in existence, please so state, separately specifying for each document no longer existing:

   a.    the type of document;

   b.    the type of information contained therein;

   c.     the date(s) on which it was created;

   d.    the sender(s) and recipients(s), if applicable;

   e.    the date (or approximate date) on which it ceased to exist;

   f.    the circumstances under which it ceased to exist;

   g.    the name of the person authorizing the disposal or destruction or having responsibility for the loss of the document;

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h.   the identity of all persons having knowledge of the contents of such document; and

i.   the paragraph number(s) of the request(s) in response to which the document otherwise would have been produced.

5.   For each document produced, either identify the paragraph or paragraphs of the "Documents Requested" section of this subpoena pursuant to which the document is produced, or produce such documents as they are kept in the ordinary course of business.

6.   You are required to produce documents or things in your possession, custody or control, regardless of whether such documents or materials are possessed directly by you or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, investigators, or by your attorneys or their agents, employees, representatives or investigators.

7.   Documents shall be produced in such fashion as to identify the department, branch or office in whose possession they were located and, where applicable, the natural person in whose possession they were found.

8.   If no documents are responsive to a particular request, please state that no responsive documents exist.

9.   To the extent any document responsive to any of the document requests is not produced in full or is redacted on the grounds that it is privileged or otherwise claimed to be protected against production - including without limitation those documents explicitly excluded from the request on the ground of privilege -provide the following information:

a.   Nature of the privilege (including without limitation work product) which is being claimed and, if the privilege is governed by state law, the state's privilege rule being invoked; and

b.    For documents: (i) the type of document, e.g., letter or memorandum; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document, including without limitation the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to you and to each other.

c.    For oral communications: (i) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to you and to the person making the communication; (ii) the date and place of communication; and (iii) the general subject matter of the communication.

# SCHEDULE A
## TO SUBPOENA

## REQUESTS FOR PRODUCTION

1.      The source code (in a form readable by a source code editor tool) for all versions of the Microsoft Scanner and Camera Wizard that you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.

2.      Documents sufficient to identify each JPEG Software Product you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.

3.      All versions of all source code (in a form readable by a source code editor) for encoding data into a JPEG file format and/or decoding JPEG files for each JPEG Software Product identified in response to Request No. 2.

4.      All documents that illustrate and/or describe the manner in which each JPEG Software Product identified in response to Request No. 2 encodes data into a JPEG file format and/or decodes a JPEG file, including documents that identify the codewords employed to encode data into a JPEG file format and/or to decode a JPEG file.

5.      Documents sufficient to show the volume and sales price of each JPEG Software Product identified in response to Request No. 2 that you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.

6.  Any and all documents which refer to or reflect any revisions or changes to the source code for the JPEG Software Products identified in response to Request No. 2 that were requested by HP.

7.  All documents which refer or relate to this lawsuit, the Patents-in-Suit, Princeton Digital or Princeton Digital Image Compression.

8.  Documents which refer or relate to or comprise agreements, proposals for agreements or revisions to agreements between you and HP relating to the JPEG Software Products identified in response to Request No. 2.

9.  Any and all documents which refer or relate to a request and/or inquiry for documents made by HP, in the time period 2010 to present relating to or for purposes of this lawsuit.

## SCHEDULE B
## TO SUBPOENA

## DEPOSITION TOPICS

1.     The identity and operation of each JPEG Software Product that you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.

2.     For each JPEG Software Product identified in response to Topic No. 1, the identity of each person involved in the design, development and authoring of the source code that implements the functionality of encoding data into a JPEG file format and the functionality of decoding a JPEG file.

3.     The circumstances surrounding any and all revisions or changes of each JPEG Software Product identified in Topic No. 1 where such revisions or changes were made at the request or on the behalf of HP.

4.     The volume and sales price of each JPEG Software Product identified in Topic No. 1 that you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.

5.     The circumstances surrounding any and all agreements, proposals for agreements or revisions to agreements between you and HP relating to the JPEG Software Products identified in Topic No. 1.

6.     The circumstances surrounding any and all requests and/or inquiries for documents made by HP, in the time period 2010 to present relating to or for purposes of this lawsuit.

7.     The identity, source and authenticity of each document or thing (including source code) produced in response to the Requests for Production set forth in Schedule "A."

# EXHIBIT
# "B"

| | | |
|---|---|---|
| PRINCETON DIGITAL IMAGE CORPORATION | §<br>§<br>§<br>§ | No Civil Action pending in WDWA |
| Plaintiff (issuer of subpoena), | §<br>§<br>§ | Related Civil Action is Case No. 2:10-cv-00029-DF (Motion Granted to transfer venue from EDTX to SDNY) |
| v. | §<br>§<br>§ | |
| MICROSOFT CORPORATION | §<br>§<br>§ | |
| Defendant (respondent). | § | |

**MICROSOFT CORPORATION'S RESPONSES TO PRINCETON DIGITAL IMAGE CORPORATION'S SUBPOENA INCLUDING REQUESTS FOR PRODUCTION AND DEPOSITION**

Non-party Microsoft Corporation ("Microsoft") provides the following objections and responses to the Subpoena served upon Microsoft on September 26, 2011 by Princeton Digital Image Corporation ("PDIC")[1] in connection with *Princeton Digital Image Corporation v. Canon Inc. et al.*, Case No. 2:10-cv-00029-DF, ("the underlying action"/"this case").[2]

**PRELIMINARY STATEMENTS**

Microsoft incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may repeat a General Objection for emphasis or some other reason. The failure to include any General Objection in any specific response shall not constitute a waiver of any General Objection to that request. Microsoft expressly reserves the right to object to the use of these responses during any

---

[1] PDCI is referred to herein as "the Plaintiff" and is variously self-referred to in the Subpoena as "Princeton Digital," "Princeton Digital Image Corporation," "PDIC," and "Princeton Digital Image Compression."

[2] On September 30, 2011, J. Ward, then presiding over the underlying action granted a motion to transfer venue to the Southern District of New York.

subsequent proceeding, including the trial of the underlying action to the present Subpoena. Microsoft's responses to PDIC's Subpoena are made to the best of Microsoft's present knowledge, information, and belief based on a reasonable investigation.

## GENERAL OBJECTIONS

The following General Objections shall be deemed incorporated into the objections and Responses to each and every specific request:

1. **Undue Burden**. Microsoft objects to PDIC's requests for production and testimony to the extent they impose an undue burden, including imposing an undue burden on Microsoft as a non-party.

2. **Privilege**. Microsoft objects to PDIC's requests for production and testimony to the extent they seek information that is "Privileged," which, for purposes here, includes information protected from disclosure by any privilege or other protection or immunity including, without limitation, the attorney-client privilege, a settlement privilege, the joint-defense privilege, the common-interest privilege, the work-product doctrine, or any other constitutional, statutory, common-law or regulatory protection, immunity or proscription from disclosure. Thus, "Non-privileged" information means information outside of the scope of the aforementioned "Privileged" definition. Microsoft does not intend the inadvertent production of any Privileged or protected information to constitute a waiver of Microsoft's rights to assert any applicable privilege, immunity or protection with respect to any such information or any other matter.

3. **Lack of Relevance**. Microsoft objects to PDIC's requests for production and testimony to the extent that PDIC calls upon Microsoft to investigate, collect, and disclose information and/or documents and things which are neither relevant to the subject matter of the

underlying action nor reasonably calculated to lead to the discovery of admissible evidence, including for example, a) any information related to decoding JPEG files in that no claim of any of the "patents-in-suit" are directed to decoding and b) any information related to any instrumentality other than that which PDIC expressly and specifically named in its infringement contentions.

4.    **Obligations beyond Civil Rules**.  Microsoft objects to PDIC's requests for production and testimony to the extent they attempt to impose obligations upon Microsoft that are beyond the scope of the Federal Rules of Civil Procedure and/or the issuing court's rules, especially in light of the Federal Rules of Civil Procedure that relate to nonparties.

5.    **No Waiver**.  By responding to PDIC's particular requests for production and testimony, Microsoft does not waive its General Objections or any specific objection to a particular request. Similarly, by stating a specific objection in response to a particular request, Microsoft does not waive its General Objections. Microsoft expressly reserves the right to challenge the competency, relevancy, materiality or admissibility of, or otherwise object to the introduction into evidence of, any information provided in response to these requests for production or testimony.

6.    **Supplementation**.    Microsoft's responses to PDIC's requests for production and testimony are based upon present knowledge, information and belief following a reasonable search and inquiry.  Microsoft does not undertake any obligation to supplement beyond that imposed by the Federal Rules of Civil Procedure.

7.    **Confidential and Proprietary Information**.    Microsoft objects to PDIC's requests for production and testimony to the extent that they seek disclosure of confidential information, to the extent they seek to invade any right to privacy under any

applicable state or federal law or constitutional provision and/or seek trade secrets, confidential, business, financial, proprietary, competitive or sensitive commercial information that is entitled to protection under any applicable law including, without limitation, Fed. R. Civ. P. 26. Microsoft further objects to PDIC's requests for production to the extent they seek disclosure of information that Microsoft is not permitted to disclose pursuant to confidentiality obligations or agreements with non-parties. Subject to its other General Objections, and any specific objections set forth below, Microsoft would only provide relevant information in a manner consistent with an appropriate protective order that has been entered by an Article III court/courts. Microsoft's understanding is that no such order has yet been entered.

8. **New Documents**. Microsoft objects to Plaintiffs' requests for production to the extent that they seek to impose an obligation on Microsoft to create and maintain wholly new documents, through recording or other capture of audio, visual and/or other digital communications solely for the purpose of discovery in the litigation where communications are not otherwise recorded or captured in the ordinary course of Microsoft's business. Examples of such communications include telephone conversations, audio and/or video conferences, instant messages, text messages and meetings.

9. **Form of Production**. Microsoft objects to the requests to the extent they seek responsive electronically stored information ('ESI') be produced in its native format. Production in native format would make it difficult for the parties to maintain control over the documents, especially in cases involving large productions, since native formats are generally designed for easy editing compared to the fixed-document formats like TIFF that are more suitable for production and evidentiary purposes. Second, due to the editable nature of most native formats, production in native format would make it impossible to ensure that

confidentiality designations are consistently associated with particular documents, and therefore observed. It is not possible to apply either document production numbers or confidentiality designations at the page level when a document is produced in its native format. Although it is possible to number or make confidentiality designations at the file level, once the document is printed out, it loses any connection to such numbering or designation. An individual reading a hard-copy printout of a protected document would have no indication that it is designated "confidential" or "highly confidential." Third, native files are capable of being modified or altered, and production in native format may raise authenticity issues that can be avoided when the information is produced in a static form. Fourth, production in native format imposes an undue burden and expense, since it would require Microsoft to search every document for hidden text that could be privileged.

Accordingly, Microsoft will not produce responsive ESI in native format. Instead, Microsoft will produce documents in a TIFF or pdf format, with a load file indicating document breaks, and with agreed upon metadata fields. Microsoft also agrees that in appropriate limited circumstances, and where there is a specific need that cannot otherwise be met (e.g., Excel spreadsheets that do not require redaction); it will also produce the native version of the document.

In the event responsive ESI does not lend itself to image file production, Microsoft will confer regarding possible native form production, with appropriate protections to be separately negotiated and mutually agreed upon in advance of such production.

10. **Information outside Microsoft's Possession, Custody or Control**. Microsoft objects to PDIC's requests for production or testimony to the extent they seek information that is not in Microsoft's possession, custody or control.

11. **Information Already in PDIC's Possession or Otherwise Available**. Microsoft objects to PDIC's requests for production and testimony to the extent they seek information already within PDIC's possession or otherwise readily available to PDIC from other source(s) less burdensome or less expensive, such as via the Internet or from a party to the underlying action.

12. **All Documents**. Microsoft objects to PDIC's requests for production to the extent they seek discovery of "all documents" as overbroad, unduly burdensome, and going beyond the Rules.

13. **Cumulative**. Microsoft objects to the requests insofar as they seek the production of information that is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome or less expensive.

14. **Timing**. Microsoft objects to the requests to the extent they call for information beyond the relevant date range of discovery as determined by the pleadings and allegations in this case

15. **Not Reasonably Accessible**. Microsoft objects to the requests for production to the extent they seek discovery of electronically stored information ('ESI') from sources that are not reasonably accessible in light of the burdens and costs required to locate, restore, review, and produce whatever responsive information may be found. Microsoft has attempted to identify below all known difficult-to-access sources that may contain responsive information, but it is not able to retrieve the information – or even to confirm with certainty

whether any responsive information in fact exists on the sources – without incurring substantial burden and cost. *See,e.g.,* Fed. R. Civ. Pro. 26(b)(2)(B) and FRCP 26(b)(2)(C). More easily accessed sources – such as active servers, hard drives and other direct access storage media containing active data and records that are responsive to the requests – are likely to yield all the information that is reasonably useful for this action. Further, production of information from some of the listed inaccessible sources may also be unreasonably cumulative and duplicative because information that might be obtained is also obtainable, to the extent it exists, from other sources that are more convenient, less burdensome, or less expensive.

The sources that may contain potentially responsive information which Microsoft is neither searching nor producing because they are not reasonably accessible fall under the categories set out below. Microsoft has attempted to provide as much detail as is reasonably possible regarding these sources, in an effort to enable requester to intelligently evaluate the burdens and costs of providing discovery from these sources, and the likelihood of finding responsive and relevant information on the identified sources.

I. **Categories/Types of Inaccessible Sources**

    A. **Disaster Recovery and Business Continuity**

        1. **Centrally Managed Exchange Email Servers**

            The Exchange servers maintain all deleted and modified mailbox content for the past 30 days. This is the Microsoft Exchange 'backup' data. Exchange does not have separate media that contains 'backup' data other than what is described here. Microsoft has not suspended the post-30 day recycling process for deleted and modified content for employees.

        2. **Centrally Managed File Servers**

            Process prior to 2008:

File servers located in the Microsoft IT managed datacenters, as well as certain servers located outside of the datacenters but whose backup services were managed by Microsoft IT, were backed up in full on a weekly basis, with daily differential backups. Weekly tapes were maintained for 21 days; monthly tapes were kept for 90 days. After 90 days the tapes were recycled.

Process from 2008 to present:

Each protected resource (e.g. data volume, file share, etc.) receives a recovery point each day. File servers are retained on disk for 28 days, with only a monthly backup tape created and retained for 90 days. After 90 days, the tapes are recycled. Microsoft has not suspended the backup rotation of this disaster recovery system. Microsoft is not searching or producing ESI from this disaster recovery media.

3.    **Other File Servers Located Outside the Microsoft IT Datacenters**

In addition to its centralized information systems managed by Microsoft's IT group, Microsoft business units maintain many other, decentralized information systems that are used by different business units and functional groups as required by the business needs of such units and groups, often for software development and testing. The business units and functional groups may call on Microsoft IT to perform their disaster recovery/business continuity services, or they may provide their own disaster recovery services. Each decentralized group establishes and manages its own disaster recovery process, and such processes may vary from group to group. Many of these groups follow the same protocol for file server backups as followed by Microsoft's IT group, as set out in the preceding section.

Microsoft has not suspended the backup rotation of the disaster recovery and business continuity systems used for these decentralized information systems. Microsoft is not searching or producing ESI from these disaster recovery media.

**B. Obsolete Backup Media**

Microsoft's disaster recovery/business continuity policies have evolved with changing technologies and business needs over time. As to some of the file servers currently or historically managed by Microsoft's centralized IT group, obsolete backup media may exist. Such media is not used for disaster recovery, nor is it used for any business purpose.

For a majority of the obsolete media, Microsoft has no record of what data was written to an individual tape or reel due to the loss or retirement of obsolete tape databases and the labels on the individual housings of the tapes and reels, or on the bins is not informative as to content. When inventory or labeling information is available it is usually limited to include some of the following data points: the name of the server, the media type, an ID or tracking number for the media, the date of the creation of the media, and the drives backed up. Microsoft has no records identifying the business units or individuals who stored documents on a particular server, and therefore has no record of whose or what documents might be stored on any of the obsolete tapes. In many instances, the drives needed to restore obsolete media are no longer available at Microsoft, and may not be available commercially or otherwise. The cost and burden of restoring these obsolete media would be excessive, even assuming that the hardware, software and trained staff to restore the media could be located. Microsoft is not searching or producing documents from this obsolete media and may not retain it.

**C. Legacy Systems**

Microsoft was incorporated in 1981 and began operations a few years before that. As of August 2011 Microsoft had over 90,000 employees working in over 580 buildings located in 37 of the United States and over 111 countries around the world. Over the years Microsoft has replaced, changed, and/or upgraded the hardware and software used by individual employees and for its shared information systems on numerous occasions. As such, it is possible that legacy data remaining from obsolete systems is located in various storage media which may be incompatible with and unintelligible on the successor systems. To the

extent such legacy data exists, it is possible that current employees are not aware of its existence or location. Microsoft is not searching its legacy systems because it believes they are "not reasonably accessible because of undue burden or cost" as contemplated by Fed. R. Civ. P. 26(b)(2)(B) and may not retain such systems.

## D.     Sources Requiring Computer Forensics to Access

Microsoft is not searching or producing information from any source that is capable of being accessed or viewed only through forensic or other extraordinary means. Many of these data types are created by the operating system or an application to assist in memory management or enhance the efficient functioning of the application or operating system. Operating systems and applications generally create and overwrite such data without the intent or specific knowledge of users. Although it is not possible to provide all the particulars of the information that might be mined through such extraordinary processes without actually performing them, examples of the types of materials that, in general, may be forensically retrieved include the following:

### 1.     Residual, Latent or Ambient Data

Residual data, which is sometimes also called "latent" data or "ambient" data, refers to data that is not active on a computer system which is inaccessible without specialized forensic tools and techniques. "Until overwritten, these data reside on media such as a hard drive in unused space and other areas available for data storage." The Sedona Conference Glossary (2007), p. 30 (*Latent Data*). This category includes "data that is not active on a computer system, including (1) data found on media free space; (2) data found in file slack space; and (3) data within files that has functionally been deleted in that it is not visible using the application with which the file was created, without use of un-delete or special data recovery techniques. May contain copies of deleted files, Internet files and file fragments." The Sedona Conference Glossary ( 2007), p. 44 (*Residual Data*). Residual, latent or ambient data may also include such items as fragments of instant messaging chats that were not saved by the

chat participants but that the operating system placed temporarily on the hard drive for memory management purposes without the knowledge of the user.

**2.     Temporary Files**

These are "files stored on a computer for temporary use only, often created by Internet browsers. These "temp files" store information about Web sites that a user has visited, and allow for more rapid display of the Web page when the user revisits the site. Forensic techniques can be used to track the history of a computer's Internet usage through the examination of these files. Temp files are also created by common office applications, such as word processing or spreadsheet applications." The Sedona Conference Glossary (2007), p. 50.

**3.     Cached Storage**

Cache is "a dedicated, high speed storage location which can be used for the temporary storage of frequently used data. As data may be retrieved more quickly from cache than the original storage location, cache allows applications to run more quickly. Web site contents often reside in cached storage locations on a hard drive." The Sedona Conference Glossary (2007), p.7.

**4.     Swap Files or Page Files**

A swap file is a "file used to temporarily store code and data for programs that are currently running. This information is left in the swap file after the programs are terminated, and may be retrieved using forensic techniques. Also referred to as a page file or paging file." The Sedona Conference Glossary (2007), p. 49.

**E.     Databases**

In its May 27, 2005 (revised July 25, 2005) Report to the Standing Committee on Rules of Practice and Procedure, and specifically its discussion of amended Rule 26(b)(2)(B) at p. 40, the Civil Rules Advisory Committee gives several examples

from current technology of difficult-to-access sources, including backup tapes and deleted data. The Advisory Committee also refers to databases, as follows: "Databases that were designed to create certain information in certain ways and that cannot readily create very different kinds or forms of information." Report of the Civil Rules Advisory Committee, dated May 27, 2005 (revised July 25, 2005), available here:

http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Reports/CV5-2005.pdf. In light of this, Microsoft states that it is possible that responsive information exists within databases that are structured to hold or report information in certain formats, and which cannot readily provide different data or data in different configurations. To the extent the requests seek different data or data in configurations different from those for which such databases are configured, Microsoft is not searching or attempting to produce information from such databases because it believes they are "not reasonably accessible because of undue burden or cost" as contemplated by Fed. R. Civ. P. 26(b)(2)(B).

## F.     Source Code not Stored in Microsoft's Central Source Repositories

Microsoft objects to the requests to the extent they seek the production of all source code for a particular product. Source code for a large software product often contains tens of millions of lines of code that hundreds or even thousands of individuals in different parts of the company have helped create over a number of years. Microsoft currently manages the process using a database tool called Source Depot, also called the "source tree." At any one time, the Source Depot for a product or major part contains the most current version of the source code for that product as well as source code relating to some various past versions. Collecting source code from the Source Depot is relatively straightforward. However, not all source code for a product or major part is stored in its source tree. For example, Microsoft Office contains parts built by groups within Microsoft outside the Office group (e.g., the division that creates tools used by software developers) and by third-party vendors. The source code for such "partner parts" is created and stored by the partner group elsewhere in Microsoft

or by the third-party vendor, which provides only already-compiled binary code – not source code – to the Office source tree.

The process to identify, locate and collect all of the source code not stored in a product's source tree is extraordinarily difficult, time-consuming, and not always fruitful. There is no single comprehensive list of all the source code for the parts that were contributed by partner groups. This is because, in the ordinary course of business, and after a product is released, Microsoft has no need to identify or collect all the source code for it. When a product such as Office is released, the source code in the source tree is "compiled" into "binary" (i.e., a series of zeros and ones, a/k/a "object code") code and combined with binary code provided by any partner groups to "build" the version that is released to licensees. Thereafter, it may be necessary to locate certain portions of source code used to build the product in order to fix bugs, but the full set of source code is not needed. In order to be certain that it has assembled the complete set of source code for a product released several years ago, Microsoft would have to work backward from the final product. This would require first determining which binary code in the final product is or is not associated with what versions and parts of source code in the (more readily accessible) source tree. Then, Microsoft developers would need to figure out which partner group produced that binary code , and then attempt to obtain the code from that group. Many developers in these groups will have changed jobs, moved to other groups within Microsoft, or may have left the company, and may no longer be able to provide that group's portion of source code.

II.    **Reservation of Rights**

    A.    **Other Sources That Are Not Reasonably Accessible**

In addition, it is possible that Microsoft's information systems may retain information on other sources that are accessible only by incurring substantial burdens or costs. Microsoft's identification of sources that are not reasonably accessible is based upon information currently known. Microsoft reserves the right to supplement its response as additional

information about other potentially responsive information from other sources that are not reasonably accessible becomes known.

III.     **Meet and Confer**

As set forth in more detail in its responses to the individual requests for production, *infra*, Microsoft is not yet agreeing to produce any information at this time. To the extent, after meeting and conferring, Microsoft agrees to produce any information; Microsoft will only produce ESI that is relevant, responsive, not privileged, and reasonably accessible. Microsoft believes that you should review and evaluate requesting the information from such sources before requesting that Microsoft search for and produce information contained on sources that are not reasonably accessible. If, after such review and evaluation, you continue to seek discovery of information from sources that have been identified as not reasonably accessible, Microsoft requests that the parties schedule a meet-and-confer to discuss, among other things, the particular type(s) of information sought and its relevance to the case, the burdens and costs of accessing, retrieving and reviewing such information, the needs that may establish "good cause" for requiring all or part of the requested discovery notwithstanding its inaccessibility, and conditions on obtaining and producing the information that may be appropriate, including whether you are willing to pay the costs associated with such discovery.

16.     **Time and/or Place**. Microsoft objects to the time of the Notice as unduly burdensome and further objects to the extent that meeting at the prescribed time and/or place is contrary to the Rules.

17.     **Definitions**.   Microsoft objects to PDIC's extensive "Definitions" and "Instructions" sections in PDIC's Subpoena to the extent they seek to impose obligations on Microsoft that are beyond those required by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Rules for the Western District of Washington.

a)  Microsoft objects to PDIC's definition of "Defendant," "Microsoft," "You,"

and "Your" as ambiguous, overly broad, and unduly burdensome. For

example, Microsoft objects to the extent this definition includes persons who are insufficiently identified or insufficiently related to Microsoft, this Subpoena, and even the underlying action (e.g., affiliates, joint ventures, agents, consultants, attorneys, and "all other persons acting or purporting to act on behalf of the forgoing.") Accordingly, Microsoft limits this definition to Microsoft Corporation.

b) Microsoft similarly objects to the definition of "HP" "Princeton Digital Image Compression, and "PDIC" for the reasons consistent with those mentioned above.

c) Microsoft objects to the definitions of "JPEG" and "JPEG Software Product" as overbroad, unduly burdensome and ambiguous. Microsoft also objects as it seeks information that is not relevant.

d) Microsoft objects to PDIC's definition of "relate," "refer" and other items in No. 11 as ambiguous, overly broad, and unduly burdensome. For example, Microsoft objects to the extent the definition purports to extend to such undefined and expansive terms including "directly or indirectly reflecting, concerning, involving, and evidencing."

e) Microsoft objects to PDIC's definition of "document" and "documents" and "thing and "things" to the extent it goes beyond the Federal Rules of Civil Procedure and is unduly burdensome.

f) Microsoft objects to instruction 1 as ambiguous and unduly burdensome.

g) Microsoft objects to instructions 3, 4, 5, 6, 7 and 9 as overbroad, unduly burdensome and vague and as going beyond what is required under the

applicable rules.  These instructions also impose an undue burden to gather the requested information in the manner identified.

18.  **Irrelevant Information**.   Microsoft objects to PDIC's requests for production as vague, ambiguous, and overly broad in scope, to the extent they seek information that is not relevant.  This would include, but not be limited to, any information in connection with U.S. Pat. No. 4,860,103.  It would also include any information dated after the expiration date of U.S. Pat. No. 4,813,056.  Microsoft objects insofar as PDIC seeks information outside the scope of any claim of '056 patent; including, for example, any information related to decoding JPEG files insofar as no claim of the '056 patent is directed to a decoding process.

19.  **Unbounded to time or technology**.  Microsoft objects to PDIC's requests for production to the extent they are unbounded as to time or technology as overly broad, unduly burdensome, seeking information that is not relevant in this case.

20.  **Undefined Terms**.   Microsoft objects to PDIC's requests for production to the extent they use terms that are not defined or understood.  Microsoft will attempt to provide responses as it presently understands what is being asked.

21.  **Third-party information**.  Microsoft objects to PDIC's requests to the extent that they purport to require Microsoft to conduct discovery of or to investigate third parties over whom Microsoft exercises no control or on whose behalf Microsoft lacks the authority to respond.

22.  **Timeframe**.  Microsoft objects to PDIC's request that documents be produced within a timeframe inconsistent with the Federal Rules of Civil Procedure, the Local Rules (including the Local Patent Rules), an applicable Docket Control Order and/or Discovery Order in the underlying action, or pertinent case law.

23.     **Costs and Fees**.  Microsoft objects to further complying with PDIC's Subpoena in the absence of an agreement by PDIC to reimburse Microsoft for its costs and fees in connection with further complying with the same.  Microsoft objects to further complying to the extent that PDIC has not complied with Fed. R. Civ. P. Rule 45(c)(1) and taken reasonable steps to avoid imposing undue burden or expense on a person subject to the Subpoena.

24.     **Unreasonable in view of the Circumstances**.  Microsoft objects to PDIC's requests for production and testimony to the extent that they are unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive, or the burden or expense of providing the proposed discovery outweighs its likely benefits – all, particularly in view of Microsoft's status as a non-party to this case.

25.     **Speculative**.  Microsoft objects to PDIC's Requests to the extent they are based on hypothetical claims that may or may not be brought.

**Deposition Notice Generally**.  In addition to specific objections to each Deposition Topic below, Microsoft objects generally to producing a witness and to providing testimony in response to PDIC's Subpoena in view of the short notice (on October 28, 2011) and insofar as discussing the noticed topics would be objectionable on the same grounds as producing documents related thereto as mentioned above.

Subject to and without waiving its General Objections, Microsoft responds to each of PDIC's requests for production and deposition-topic notices as follows:

**SPECIFIC OBJECTIONS TO REQUESTS FOR PRODUCTION**

1.      **The source code (in a form readable by a source code editor tool) for all versions of the Microsoft Scanner and Camera Wizard that you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.**

**Response:**

Confidential information:  Microsoft objects to this Request on the grounds that it seeks highly-confidential source code and trade-secret information in the absence of an agreed-upon, court-entered protective order.

Undue Burden/Overly Broad/Ambiguous:  Microsoft objects to this Request as vague, ambiguous, and overly broad.  Microsoft objects to this Request as creating an undue burden by seeking "all versions" that Microsoft "sold or otherwise provided" "directly or indirectly" to HP.  The request contains vague, overbroad and unduly burdensome terms such as "all versions of the Microsoft Scanner and Camera Wizard," and "you sold or otherwise provided directly or indirectly."  Microsoft further objects to the extent that this request seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action.  This request is also overly broad in view of the definitions that PDIC has ascribed to the defined terms in this Request.  There also less burdensome methods of discovery available.

High costs of production:  Microsoft objects to this request on the ground that providing the requested information would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant:  Microsoft objects to this Request as creating an undue burden by seeking irrelevant information from a non-party.  Microsoft also objects to this request in

that it seeks information outside the scope of the case. This Request seeks discovery beyond the latest expiration date of both patents-in-suit in the underlying action.

Based on the foregoing general and specific objections, Microsoft does not anticipate producing any documents in response to this Request at this time. But after an agreed-upon protective order is entered by the appropriate court(s), then Microsoft will respond to a request to meet and confer.

2.     **Documents sufficient to identify each JPEG Software Product you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.**

**Response:**

Undue Burden/Overly Broad/Ambiguous:  Microsoft objects to this Request as vague, ambiguous, and overly broad. By virtue of PDIC's definition of "JPEG Software Product," this request goes beyond any issue in this case. Microsoft further objects to the extent that this request seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action. This request also uses vague, overbroad and unduly burdensome terms such as "each JPEG Software Product you sold or otherwise provided directly or indirectly." This request is also overly broad in view of the definitions that PDIC has ascribed to the other defined terms in this Request. There are also less burdensome forms of discovery available.

Confidential information:  Microsoft objects to this Request on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

High costs of production:  Microsoft objects to this request on the ground that providing the requested information would subject non-party Microsoft to the types of

undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant:  Microsoft objects to this Request as creating an undue burden by seeking irrelevant information from a non-party.  Microsoft objects on the grounds to the extent this Request seeks information outside the scope of the underlying action.  For example, this request seeks information beyond the expiration of either of the underlying patents-in-suit.  By way of further example, this Request seeks information outside the scope of the claims of the '056 patent (or any other asserted patent).  This Request seeks information related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Information obtainable from other sources:  Nonparty Microsoft objects to this Request in that This Request seeks information that can be obtained from some other source that is more convenient, less burdensome, or less expensive; including, for example, party HP.

Based on the foregoing general and specific objections, Microsoft does not anticipate producing any documents in response to this Request at this time.  But after an agreed-upon protective order is entered by the appropriate court(s), then Microsoft will respond to a request to meet and confer.

3. **All versions of source code (in a form readable by a source code editor) for encoding data into a JPEG file format and/or decoding JPEG files for each JPEG Software Product identified in response to Request No. 2.**

**Response:**

Confidential information: Microsoft objects to this Request on the grounds that it seeks highly-confidential source code and trade-secret information in the absence of an agreed-upon, court-entered protective order.

Undue Burden/Overly Broad/Ambiguous: Microsoft objects to this Request as vague, ambiguous, and overly broad. Microsoft objects to this Request as creating an undue burden by seeking "all versions" for encoding data into a JPEG file format "and/or" decoding. Microsoft further objects to the extent that this request seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action. This request also uses vague, overbroad, and unduly burdensome terms such as "all versions," "for encoding data into a JPEG file format and/or decoding JPEG files," and "for each JPEG Software Product." This request is also overly broad in view of the definitions that PDIC has ascribed to the defined terms in this Request. There are also other less burdensome forms of discovery available.

High costs of production: Microsoft objects to this request on the ground that providing the requested information would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant: Microsoft objects to this Request as creating an undue burden by seeking irrelevant information from a non-party. Microsoft objects on the grounds to the extent this Request seeks information outside the scope of the underlying action. For example, this request seeks information beyond the date of expiration of either of the underlying patents-in-suit. By way of further example, this Request seeks information outside the scope of the claims of the '056 patent (or any other asserted patent). This Request seeks information related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Based on the foregoing general and specific objections, Microsoft does not anticipate producing any documents in response to this Request at this time. But after an agreed-upon protective order is entered by the appropriate court(s), then Microsoft will respond to a request to meet and confer.

4. **All documents that illustrate and/or describe the manner in which each JPEG Software Product identified in response to Request No. 2 encodes data into a JPEG file format and/or decodes a JPEG file, including documents that identify the codewords employed to encode data into a JPEG file format and/or to decode a JPEG file.**

**Response:**

Undue Burden/Overly Broad/Ambiguous: Microsoft objects to this Request as vague, ambiguous, and overly broad. Microsoft objects to this Request as creating an undue burden by seeking "all documents" that "illustrate and/or describe the manner" in which "each JPEG Software Product" identified in Request No.2 encodes data "and/or" decodes []. Microsoft further objects to the extent that this request seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action. This request also uses vague, overbroad and unduly burdensome terms such as "all documents," "each JPEG Software Product," "encodes data into a JPEG file format and/or decodes a JPEG file," and "codewords employed to encode data into a JPEG file format and/or to decode a JPEG file." This request is also overly broad in view of the definitions that PDIC has ascribed to the defined terms in this Request. There are also less burdensome means of discovery available.

Confidential information: Microsoft objects to this Request to the extent it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Privileged information: Microsoft objects to this Request to the extent that its scope invades Privileged information or immune information.

High costs of production: Microsoft objects to this request on the ground that providing the requested information would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant: Microsoft objects to this Request as creating an undue burden by seeking irrelevant information from a non-party. Microsoft objects on the grounds to the extent this Request seeks information outside the scope of the underlying action. For example, this request seeks information beyond the latest date of expiration of either of the underlying patents-in-suit. By way of further example, this Request seeks information outside the scope of the claims of the '056 patent (or any other asserted patent). This Request seeks related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Information obtainable from other sources: Nonparty Microsoft objects to this Request in that This Request seeks that can be obtained from some other source that is more convenient, less burdensome, or less expensive; including, for example, via the internet.

Based on the foregoing general and specific objections, Microsoft does not anticipate producing any documents in response to this Request at this time. But after an agreed-upon protective order is entered by the appropriate court(s), then Microsoft will respond to a request to meet and confer.

5.      **Documents sufficient to show the volume and sales price of each JPEG Software Product identified in response to Request No. 2 that you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.**

**Response:**

Confidential information:  Microsoft objects to this Request on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Undue Burden/Overly Broad/Ambiguous:  Microsoft objects to this Request as vague, ambiguous, and overly broad.  Microsoft objects to this Request as creating an undue burden by seeking volume and sales-price information for "each" JPEG Software Product identified in Request No.2.  Microsoft also objects to the extent this request uses vague, overbroad and unduly burdensome terms such as "the volume and sales price of each JPEG Software Product," and "sold or otherwise provided directly or indirectly." Microsoft further objects to the extent that this request seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action.  This request is also overly broad in view of the definitions that PDIC has ascribed to the defined terms in this Request.  Other less burdensome forms of discovery are also available.

High costs of production:  Microsoft objects to this request on the ground that providing the requested information would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant:  Microsoft objects to this Request as creating an undue burden by seeking irrelevant information from a non-party.  Microsoft objects on the grounds to the extent this Request seeks information outside the scope of the underlying action.  For

example, this request seeks information beyond the latest date of expiration of either of the underlying patents-in-suit). By way of further example, this Request seeks information outside the scope of the claims of the '056 patent (or any other asserted patent). This Request seeks related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Information obtainable from other sources: Nonparty Microsoft objects to this Request in that it seeks information that can be obtained from some other source that is more convenient, less burdensome, or less expensive; including, for example, via the internet.

Based on the foregoing general and specific objections, Microsoft does not anticipate producing any documents in response to this Request at this time. But after an agreed-upon protective order is entered by the appropriate court(s), then Microsoft will respond to a request to meet and confer.

6.    **Any and all documents which refer to or reflect any revisions or changes to the source code for the JPEG Software Products identified in response to Request No. 2 that were requested by HP.**

**Response:**

Privileged information:    Microsoft objects to this Request to the extent that its scope invades Privileged information or immune information.

Confidential information: Microsoft objects to this Request on the grounds that it seeks highly-confidential information related to source code and trade-secret information in the absence of an agreed-upon, court-entered protective order.

Undue Burden/Overly Broad/Ambiguous:    Microsoft objects to this Request as vague, ambiguous, and overly broad. Microsoft objects to this Request as creating an undue burden by seeking "any and all" documents which even "refer to" or "reflect"

"any" revisions or changes to the source code for "the JPEG Software Products identified in Request No. 2." Microsoft objects to the vague, overbroad and unduly burdensome terms "any and all documents," "refer to or reflect," "any revisions or change," and "JPEG Software Products". Microsoft further objects to the extent that this request seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action. This request is also overly broad in view of the definitions that PDIC has ascribed to the defined terms in this Request. There are also other less burdensome discovery methods available.

High costs of production: Microsoft objects to this request on the ground that providing the requested information would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant: Microsoft objects to this Request as creating an undue burden by seeking irrelevant information from a non-party. Microsoft objects on the grounds to the extent this Request seeks information outside the scope of the underlying action. For example, this request seeks information beyond the latest date of expiration of either of the underlying patents-in-suit. By way of further example, this Request seeks information outside the scope of the claims of the '056 patent (or any other asserted patent). This Request seeks related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Based on the foregoing general and specific objections, Microsoft does not anticipate producing any documents in response to this Request at this time. But after an agreed-upon protective order is entered by the appropriate court(s), then Microsoft will respond to a request to meet and confer.

7.     **All documents which refer or relate to this lawsuit, the Patents-in-Suit, Princeton Digital or Princeton Digital Image Compression.**

**Response:**

Confidential information:  Microsoft objects to this Request on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order

Undue Burden/Overly Broad/Ambiguous:  Microsoft objects to this Request as vague, ambiguous, and overly broad.  Microsoft objects to this Request as creating an undue burden by seeking "all" documents which even "refer to" or "relate" to the underlying action or the patent-in-suit or the plaintiff companies.  Such terms are also overbroad and vague.  It is also unknown what "relate" means in this context.  There are also less burdensome forms of discovery available.

High costs of production:  Microsoft objects to this request on the ground that providing the information sought would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Privileged information:   Microsoft objects to this Request to the extent that its scope invades Privileged information or immune information.

Not Relevant:  Microsoft objects to this Request as creating an undue burden by seeking irrelevant information from a non-party.  Microsoft objects on the grounds to the extent this Request seeks information outside the scope of the underlying action.  For example, this request requests "all documents" nonparty Microsoft has related to PDIC. Such is improper in this case.

Based on the foregoing general and specific objections, Microsoft does not anticipate producing any documents in response to this Request at this time.  But after an

agreed-upon protective order is entered by the appropriate court(s), then Microsoft will respond to a request to meet and confer.

8. **Documents which refer or relate to or comprise agreements, proposals for agreements or revisions to agreements between you and HP relating to the JPEG Software Products identified in response to Request No. 2,**

**Response:**

Privileged information: Microsoft objects to this Request to the extent that its scope invades Privileged information or immune information.

Confidential information: Microsoft objects to this Request on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Undue Burden/Overly Broad/Ambiguous: Microsoft objects to this Request as vague, ambiguous, and overly broad. Microsoft objects to this Request as creating an undue burden by seeking documents that even "refer to" or "relate" to an array of agreements between HP and Microsoft. It is unknown what "relate" means in this context. Microsoft also objects to the vague, overbroad and unduly burdensome terms "documents which refer or relate," "comprise agreements, proposals for agreements or revisions to agreements," and "relating to the JPEG Software Products identified in response to Request No. 2." There are also less burdensome forms of discovery available.

High costs of production: Microsoft objects to this request on the ground that providing the information sought would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant: Microsoft objects to this Request as creating an undue burden by seeking irrelevant information from a non-party. Microsoft objects on the grounds to the

extent this Request seeks information outside the scope of the underlying action. For example, this request seeks information beyond the latest date of expiration of either of the underlying patents-in-suit. By way of further example, this Request seeks information outside the scope of the claims of the '056 patent (or any other asserted patent). This Request seeks related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Information obtainable from other sources: Nonparty Microsoft objects to this Request in that This Request seeks that can be obtained from some other source that is more convenient, less burdensome, or less expensive; including, for example, party HP.

Based on the foregoing general and specific objections, Microsoft does not anticipate producing any documents in response to this Request at this time. But after an agreed-upon protective order is entered by the appropriate court(s), then Microsoft will respond to a request to meet and confer.

9. **Any and all documents which refer or relate to a request and/or inquiry for documents made by HP, in the time period 2010 to present relating to or for purposes of this lawsuit.**

**Response:**

Confidential information: Microsoft objects to this Request on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Privileged information: Microsoft objects to this Request to the extent that its scope invades Privileged information or immune information.

Undue Burden/Overly Broad/Ambiguous: Microsoft objects to this Request as vague, ambiguous, and overly broad. Microsoft objects to this Request as creating an undue burden by seeking "[A]ny and all" documents that even "refer" or "relate" to a

request "and/or" inquiry for documents made by HP. Microsoft also objects to the vague, overbroad and unduly burdensome terms "any and all documents," "refer or relate," "a request and/or inquiry for documents," and "relating to or for purposes of this lawsuit." There are also less burdensome forms of discovery available.

High costs of production: Microsoft objects to this request on the ground that providing the information sought would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Information obtainable from other sources: Nonparty Microsoft objects to this Request in that This Request seeks information that can be obtained from some other source that is more convenient, less burdensome, or less expensive; including, for example, party HP.

Based on the foregoing general and specific objections, Microsoft does not anticipate producing any documents in response to this Request at this time. But after an agreed-upon protective order is entered by the appropriate court(s), then Microsoft will respond to a request to meet and confer.

**OBJECTIONS TO NON-PARTY DEPOSITION AND DEPOSITION TOPICS**

Microsoft objects to producing a Rule 30(b)(6) witness as the Subpoena describes on the indicated date of October 28, 2011. Having just received the Subpoena on September 26, 2011, Microsoft would be subject to an undue burden as well as substantial costs and fees to produce a witness by late October given the expansive breadth of the Subpoena as served. Moreover, the testimony sought seeks confidential information in the absence of an agreed-upon, court-entered protective order. Microsoft hereby requests PDIC to withdraw its current notice of deposition. Subject to the specific objections that follow, Microsoft is willing to meet and confer about these issues further, but at this time, Microsoft assumes the Plaintiff does not intend to take any deposition given these objections and the status of the action..

1.      **The identity and operation of each JPEG Software Product that you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.**

**Specific Objections:**

Confidential information: Microsoft objects to producing a witness to discuss this topic on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Privileged information: Microsoft objects to this Topic to the extent that its scope invades Privileged information or immune information.

Undue Burden/Overly Broad/Ambiguous: Microsoft objects to this Topic as vague, ambiguous, and overly broad. Microsoft objects to the vague, overbroad and unduly burdensome terms "operation of each JPEG Software Product," and "sold or otherwise provided directly or indirectly." By virtue of PDIC's definition of "JPEG Software Product," this Topic goes beyond any issue in this case. Microsoft further

objects to the extent that this topic seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action. This Topic is also overly broad in view of the definitions that PDIC has ascribed to the other defined terms in this Topic. There are also less burdensome forms of discovery available. Microsoft further objects to this Topic as not describing with reasonable particularity the matters for examination pursuant to Fed. R. Civ. P. 30(b)(6).

High costs:  Microsoft objects on the ground that producing a witness to discuss such topics would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant:  Microsoft objects to this Topic as creating an undue burden by seeking irrelevant information from a non-party.  Microsoft objects to the extent producing a witness to discuss this topic seeks information outside the scope of the underlying action.  For example, this Topic requests information beyond the latest date of expiration of either of the underlying patents-in-suit.  By way of further example, this Topic seeks information outside the scope of the claims of the '056 patent (or any other asserted patent).

Information obtainable from other sources:  Nonparty Microsoft objects to this Topic in that it seeks information that can be obtained from some other source that is more convenient and less burdensome, including, for example, party HP.

2.      **For each JPEG Software Product identified in response to Topic No. 1, the identity of each person involved in the design, development and authoring of the source code that implements the functionality of encoding data into a JPEG file format and the functionality of decoding a JPEG file.**

**Specific Objections:**

Confidential information:  Microsoft objects to producing a witness to discuss this topic on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Privileged information:  Microsoft objects to this Topic to the extent that its scope invades Privileged information or immune information.

Undue Burden/Overly Broad:   Microsoft objects to this Topic as vague, ambiguous, and overly broad.  Microsoft also objects to the vague, overbroad and unduly burdensome terms "for each JPEG Software Product," "identity of each person involved in the design, development and authoring," and "functionality of encoding data into a JPEG file format and the functionality of decoding a JPEG file." By virtue of PDIC's definition of "JPEG Software Product," this Topic goes beyond any issue in this case. This Topic is also overly broad in view of the definitions that PDIC has ascribed to the other defined terms in this Topic.  Microsoft further objects to the extent that this topic seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action.  Microsoft further objects to this Topic as not describing with reasonable particularity the matters for examination pursuant to Fed. R. Civ. P. 30(b)(6). There are also less burdensome forms of discovery available.

High costs:  Microsoft objects on the ground that producing a witness to discuss such topics would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant:  Microsoft objects to this Topic as creating an undue burden by seeking irrelevant information from a non-party.  Microsoft objects to the extent this topic seeks information outside the scope of the underlying action.  For example, this Topic requests information beyond the latest date of expiration of either of the underlying patents-in-suit.  By way of further example, this Topic seeks information outside the scope of the claims of the '056 patent (or any other asserted patent).  This topic seeks information related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Information obtainable from other sources:  Nonparty Microsoft objects to this Topic in that it seeks information that can be obtained from some other source that is more convenient and less burdensome, including, for example, party HP.

3.    **The circumstances surrounding any and all revisions or changes of each JPEG Software Product identified in Topic No. 1 where such revisions or changes were made at the request or on the behalf of HP.**

**Specific Objections:**

Confidential information:  Microsoft objects to producing a witness to discuss this topic on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Privileged information:  Microsoft objects to this Topic to the extent that its scope invades Privileged information or immune information.

Undue Burden/Overly Broad/Ambiguous:  Microsoft objects to this Topic as vague, ambiguous, and overly broad.  Microsoft objects to the vague, overbroad and unduly burdensome terms "circumstances surrounding," "any and all revisions or changes of each JPEG Software Product," and "made at the request or on the behalf of."  By virtue of PDIC's definition of "JPEG Software Product," this Topic goes beyond any

issue in this case. Microsoft further objects to the extent that this topic seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action. This Topic is also overly broad in view of the definitions that PDIC has ascribed to the other defined terms in this Topic. Additionally, Microsoft objects to this Topic as not describing with reasonable particularity the matters for examination pursuant to Fed. R. Civ. P. 30(b)(6). There are also less burdensome forms of discovery available.

High costs: Microsoft objects on the ground that producing a witness to discuss such topics would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant: Microsoft objects to this Topic as creating an undue burden by seeking irrelevant information from a non-party. Microsoft objects to the extent this topic seeks information outside the scope of the underlying action. For example, this Topic requests information beyond the latest date of expiration of either of the underlying patents-in-suit. By way of further example, this Topic seeks information outside the scope of the claims of the '056 patent (or any other asserted patent). This topic seeks information related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Information obtainable from other sources: Nonparty Microsoft objects to this Topic in that it seeks information that can be obtained from some other source that is more convenient and less burdensome, including, for example, party HP.

4.     **The volume and sales price of each JPEG Software Product identified in Topic No. 1 that you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.**

**Specific Objections:**

Confidential information:  Microsoft objects to producing a witness to discuss this topic on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Privileged information:  Microsoft objects to this Topic to the extent that its scope invades Privileged information or immune information.

Undue Burden/Overly Broad/Ambiguous:  Microsoft objects to this Topic as vague, ambiguous, and overly broad.  Microsoft also objects to the vague, overbroad and unduly burdensome terms "the volume and sales price of each JPEG Software Product" and "sold or otherwise provided directly or indirectly." By virtue of PDIC's definition of "JPEG Software Product," this Topic would go beyond any issue in this case.   Microsoft further objects to the extent that this topic seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action. This Topic is also overly broad in view of the definitions that PDIC has ascribed to the other defined terms in this Topic.   Microsoft further objects to this Topic as not describing with reasonable particularity the matters for examination pursuant to Fed. R. Civ. P. 30(b)(6).  There are also less burdensome forms of discovery available.

High costs:  Microsoft objects on the ground that producing a witness to discuss such topics would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant:  Microsoft objects to this Topic as creating an undue burden by seeking irrelevant information from a non-party.  Microsoft objects to the extent this

topic seeks information outside the scope of the underlying action. For example, this Topic requests information beyond the latest date of expiration of either of the underlying patents-in-suit. By way of further example, this Topic seeks information outside the scope of the claims of the '056 patent (or any other asserted patent). This topic seeks information related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Information obtainable from other sources: Nonparty Microsoft objects to this Topic in that it seeks information that can be obtained from some other source that is more convenient and less burdensome, including, for example, party HP.

5. **The circumstances surrounding any and all agreements, proposals for agreements or revisions to agreements between you and HP relating to the JPEG Software Products identified in Topic No. 1.**

**Specific Objections:**

Confidential information: Microsoft objects to producing a witness to discuss this topic on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Privileged information: Microsoft objects to this Topic to the extent that its scope invades Privileged information or immune information.

Undue Burden/Overly Broad/ambiguous: Microsoft objects to this Topic as vague, ambiguous, and overly broad. Microsoft objects to the vague, overbroad and unduly burdensome terms "circumstances surrounding," "any and all agreements, proposals for agreements or revisions to agreements," and "relating to the JPEG Software Products." By virtue of PDIC's definition of "JPEG Software Product," this Topic goes beyond any issue in this case. This Topic is also overly broad in view of the definitions that PDIC has ascribed to the other defined terms in this Topic. Microsoft further objects

to the extent that this topic seeks information related to products that were not expressly named in any of PDIC's infringement contentions in the underlying action. Additionally, Microsoft objects to this Topic as not describing with reasonable particularity the matters for examination pursuant to Fed. R. Civ. P. 30(b)(6). There are also less burdensome forms of discovery available.

High costs: Microsoft objects on the ground that producing a witness to discuss such topics would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant: Microsoft objects to this Topic as creating an undue burden by seeking irrelevant information from a non-party. Microsoft objects to the extent this topic seeks information outside the scope of the underlying action. For example, this Topic requests information beyond the latest date of expiration of either of the underlying patents-in-suit. By way of further example, this Topic seeks information outside the scope of the claims of the '056 patent (or any other asserted patent). This topic seeks information related to products that include functionality to decode JPEG files even though no claim of either of the patents-in-suit is directed toward decoding.

Information obtainable from other sources: Nonparty Microsoft objects to this Topic in that it seeks information that can be obtained from some other source that is more convenient and less burdensome, including, for example, party HP.

6. **The circumstances surrounding any and all requests and/or inquiries for documents made by HP, in the time period 2010 to present relating to or for purposes of this lawsuit.**

**Specific Objections:**

Confidential information: Microsoft objects to producing a witness to discuss this topic on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Privileged information: Microsoft objects to this Topic to the extent that its scope invades Privileged information and immune information.

Undue Burden/Overly Broad/Ambiguous: Microsoft objects to this Topic as vague, ambiguous, and overly broad. Microsoft objects to the vague, overbroad, and unduly burdensome terms "circumstances surrounding," "any and all requests and/or inquiries," and "relating to or for purposes of this lawsuit. This Topic is also overly broad in view of the definitions that PDIC has ascribed to the other defined terms in this Topic. Additionally, Microsoft objects to this Topic as not describing with reasonable particularity the matters for examination pursuant to Fed. R. Civ. P. 30(b)(6). There are also less burdensome forms of discovery available.

High costs: Microsoft objects on the ground that producing a witness to discuss such topics would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant: Microsoft objects to this Topic as creating an undue burden by seeking irrelevant information from a non-party. Microsoft objects to the extent this topic seeks information outside the scope of the underlying action.

Information obtainable from other sources: Nonparty Microsoft objects to this Topic in that it seeks information that can be obtained from some other source that is more convenient and less burdensome, including, for example, party HP.

7. **The identity, source and authenticity of each document or thing (including source code) produced in response to the Requests for Production set forth in Schedule "A."**

**Specific Objections:**

Confidential information: Microsoft objects to producing a witness to discuss this topic on the grounds that it seeks confidential information in the absence of an agreed-upon, court-entered protective order.

Privileged information: Microsoft objects to this Topic to the extent that its scope invades Privileged information and immune information.

Undue Burden/Overly Broad/Ambiguous: Microsoft objects to this Topic as vague, ambiguous, and overly broad. Microsoft objects to the vague, overbroad, and unduly burdensome terms "the identity, source and authenticity" and "each document or thing." This Topic is also overly broad in view of the definitions that PDIC has ascribed to the other defined terms in this Topic. Additionally, Microsoft objects to this Topic as not describing with reasonable particularity the matters for examination pursuant to Fed. R. Civ. P. 30(b)(6). There are also less burdensome forms of discovery available.

High costs: Microsoft objects on the ground that producing a witness to discuss such topics would subject non-party Microsoft to undue costs and expenses prohibited by the Rules (which PDIC has not agreed to reimburse).

Not Relevant: Microsoft objects to this Topic as creating an undue burden by seeking irrelevant information from a non-party. Microsoft objects on the grounds to the extent it seeks information outside the scope of the underlying action.

Information obtainable from other sources: Nonparty Microsoft objects to this Topic in that it seeks information that can be obtained from some other source that is more convenient and less burdensome, including, for example, party HP.

Dated:  October 11, 2011                          Respectfully Submitted,


By:__  /s/    Jesse J. Camacho_____
Jesse J. Camacho, Missouri Bar No. 49705
Patrick A. Lujin, Missouri Bar No. 41392
**SHOOK, HARDY & BACON LLP**
2555 Grand Boulevard
Kansas City, Missouri 64108
(816) 474-6550
(816) 421-5547 Facsimile
jcamacho@shb.com

**ATTORNEYS FOR DEFENDANT**
**MICROSOFT CORPORATION**

## CERTIFICATE OF SERVICE

The undersigned certifies that the forgoing document was served by e-mail (under Fed. R. Civ. P. Rule 5(b)(2)(E) and agreed upon in writing) upon the following counsel of record for PDIC Princeton Digital Image Corporation on the 11th day of October, 2011.

Wesley W. Yuan
DUANE MORRIS, LLP
1330 Post Oak Blvd, Suite 800
Houston, Texas 77056
Telephone: (713) 402-3900
Facsimile: (713) 583-9623
Email: wwyuan@duanemorris.com

Greg Luck
DUANE MORRIS, LLP
1330 Post Oak Blvd, Suite 800
Houston, Texas 77056
Telephone: (713) 402-3900
Facsimile: (713) 402-3901
Email: gmluck@duanemorris.com


/s/ Jesse J. Camacho

*ATTORNEY FOR DEFENDANT*
*MICROSOFT CORPORATION*

# EXHIBIT
## "C"

JEFFREY S. POLLACK
DIRECT DIAL: (215) 979-1299
PERSONAL FAX: 215.689.4942
*E-MAIL:* jspollack@duanemorris.com

*www.duanemorris.com*

October 31, 2011

**VIA E-MAIL**

Jesse J. Camacho
Shook, Hardy & Bacon L.L.P.
2555 Grand Boulevard
Kansas City MO  64108-2613

> Re:    Subpoena to Microsoft re: *Princeton Digital Image Corporation v. Canon,*
> *Inc., et al.* (No. 10-29)

Dear Mr. Camacho:

Please let us know a time on Wednesday when you are available to meet-and-confer regarding Microsoft's Responses to Princeton Digital Image Corporation's ("PDIC") subpoena.

Microsoft's Response raises the same boilerplate objections regarding alleged confidentiality, burden, and relevance to every request set forth in PDIC's subpoena.  None of these objections should hinder Microsoft from responding to PDIC's document requests.  Indeed, to the extent Microsoft predicates its refusal to produce documents on the entry of a Protective Order, we direct Microsoft to Local Patent Rule 2-2, allowing documents to be produced "Confidential – Outside Attorneys Eyes Only."

We look forward to your response and discussing PDIC's subpoena with you.

Sincerely,

*/s/ Jeffrey S. Pollack*

Jeffrey S. Pollack

JSP

# EXHIBIT
# "D"

# DuaneMorris®

JEFFREY S. POLLACK
DIRECT DIAL: (215) 979-1299
PERSONAL FAX: 215.689.4942
*E-MAIL:* jspollack@duanemorris.com

*www.duanemorris.com*

November 14, 2011

## VIA E-MAIL

Jesse J. Camacho
Shook, Hardy & Bacon L.L.P.
2555 Grand Boulevard
Kansas City MO  64108-2613

> Re:     Subpoena to Microsoft re: *Princeton Digital Image Corporation v. Canon, Inc., et al.* (No. 10-29)

Dear Jesse:

Thank you for speaking with me on Monday November 7, 2011 regarding Princeton Digital Image Corporation's ("PDIC") subpoena to Microsoft Corporation ("Microsoft").

We are happy to work with Microsoft to address any confidentiality concerns Microsoft may have and to lessen any perceived burden associated with PDIC's subpoena.  In connection therewith, please find enclosed a draft Stipulation and Protective Order pertaining to the production of documents and things requested by PDIC's subpoena.  Additionally, pending the receipt of discovery from Hewlett Packard, PDIC is willing to hold in abeyance the following document requests:

> **Request 2** – Documents sufficient to identify each JPEG Software Product you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.

> **Request 5** – Documents sufficient to show the volume and sales price of each JPEG Software Product identified in response to Request No. 2 that you sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States from 2004-2008.

> **Request 8** – Documents which refer or relate to or comprise agreements, proposals for agreements or revisions to agreements between you and HP relating to the JPEG Software Products identified in response to Request No. 2.

PDIC expects Microsoft to produce source code and documents in response to remaining document requests set forth in its subpoena.  Regarding source code generally, PDIC does not agree with Microsoft's assertion, made during our conference call, that PDIC can obtain all relevant information from publicly available binary code.  Unlike source code, binary code will not inform PDIC about the precise manner in which Microsoft's products operate and how those products perform the functions at issue in the above-referenced litigation.  Moreover, PDIC does not possess and cannot obtain binary code for all relevant products made by Microsoft and all versions of those products.  Thus, PDIC stands by its request that Microsoft make source code available to PDIC for inspection.

In connection therewith, Request No. 1 asks Microsoft to produce source code for all versions of the Microsoft Scanner and Camera Wizard that Microsoft sold or otherwise provided to Hewlett Packard from 2004-2008.  During our call, Microsoft objected to producing any source code, or other documents, beyond the expiration date of U.S. Patent No. 4,813,056.  PDIC does not agree that this is a valid objection, but in an effort to compromise will agree that the timeframe set forth in Request No. 1 be limited to January 1, 2004 – December 8, 2007.[1]  Based on this offer to compromise and subject to the entry of a Protective Order, PDIC expects that Microsoft will make the source code requested available for inspection.

Similar to Request No. 1, Request No. 3 seeks all versions of all source code (in a form readable by a source code editor) for encoding data into a JPEG file format and/or decoding JPEG files for each JPEG Software Product Microsoft sold or otherwise provided directly or indirectly to HP for use on computers offered for sale, sold or imported in the United States.  During our call, you stated that Microsoft objects to Request No. 3 because (1) it does not identify a specific product; and (2) it refers to products that might only decode JPEG files.  Microsoft contends that the decoding of JPEG files is not covered by PDIC's patents.  Nonetheless, Microsoft concedes that products that encode JPEG files, including products that both encode and decode JPEG files, are relevant to PDIC's claims in the underlying litigation and that Microsoft would provide discovery regarding such products.

PDIC does not agree with Microsoft's objections to Request No. 3.  PDIC maintains that the definition of JPEG Software Product is sufficiently narrow for Microsoft to determine what products are at issue and requested by its subpoena.  Additionally, PDIC takes issue with and objects to any effort by Microsoft, a third-party, to construe the claims of PDIC's patent, especially prior to claim construction in the underlying action.  Nonetheless, in an effort to reach a compromise with Microsoft, PDIC identifies the following products for which it is seeking source code all of which have the ability to encode JPEG files:

- Microsoft Scanner and Camera Wizard (see Request No. 1)

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[1] PDIC agrees to the same time limitations with respect to Request Nos. 3, 4, and 6.

DuaneMorris

- Microsoft Word
- Microsoft PowerPoint
- Microsoft Paint
- Windows Photo View
- Microsoft Office
- Windows Media Center; and
- Microsoft Excel.

PDIC also agrees to narrow the scope of Request Nos. 4 and 6 to pertain to the products listed above.[2] However, it should be noted that discovery is ongoing. Thus, PDIC reserves the right to amend and add to this list should it learn of additional products relevant to the claims asserted in the underlying litigation.[3]

Request No. 4 seeks all documents that illustrate and/or describe the manner in which the products listed above encode data into a JPEG file format and/or decode a JPEG file, including documents that identify the codewords employed to encode data into a JPEG file format and/or to decode a JPEG file. During our call you stated that Microsoft objects to Request No. 4's request for "all documents." As a compromise, PDIC agrees to limit Request No. 4 to documents sufficient to identify the information requested. With the compromises proposed by PDIC, it should not be unduly burdensome for Microsoft to provide the information requested and PDIC anticipates that Microsoft will produce documents responsive to this Request.

Request No. 6 seeks "any and all documents which refer to or reflect any revisions or changes to the source code for the JPEG Software Products" listed above. Again, Microsoft objects to PDIC's request for 'any and all documents." As a compromise, PDIC agrees to limit Request No. 6 to documents sufficient to refer to, reflect and identify all revisions or changes to the source code for the JPEG Software Products" listed above. With the compromises proposed

---

[2] During our call, you stated that Microsoft may take the position that it need not produce documents regarding any product not identified in PDIC's infringement contentions served in the underlying litigation. Such an objection is not sustainable. The Eastern District of Texas has repeatedly held that there is no bright line rule that discovery can only be obtained if related to an accused product identified in a party's infringement contentions. The scope of discovery may include products that are reasonably similar to those accused in a party's infringement contentions, which is what PDIC seeks from Microsoft.

[3] The compromises PDIC offers in this letter are made with the expectation that Microsoft will produce documents responsive to PDIC's document requests. PDIC reserves the right to demand full compliance with its subpoena should the parties be unable to reach agreement regarding Microsoft's obligation to produce responsive documents.

**DuaneMorris**

by PDIC, it should not be unduly burdensome for Microsoft to provide the information requested and PDIC anticipates that Microsoft will produce documents responsive to this Request.

Request No. 7 seeks documents that refer or relate to the above-referenced action, Princeton Digital, or Princeton Digital Compression. Microsoft contends that this Request is overly broad. PDIC disagrees. This Request is very narrowly tailored just to documents relating to this lawsuit and PDIC. PDIC expects that Microsoft will make a reasonable search for and produce non-privileged documents responsive to this Request.

Request No. 9 is likewise appropriate. Request No. 9 is narrowly tailored to seek the production of documents that refer or relate to a request and/or inquiry for documents made by HP, in the time period 2010 to present relating to or for purposes of this lawsuit. Though PDIC will not debate with a third party what may be "relevant" to the claims and defenses raised in the underlying litigation, those documents are unquestionably relevant and PDIC expects that Microsoft will make a reasonable search for and produce non-privileged documents responsive to this Request.

We did not discuss PDIC's topics for deposition. However, it is expected that once Microsoft produces documents and makes source code available for inspection it will make a witness available to be deposed on the deposition topics noticed.

PDIC has offered to enter into a protective order with Microsoft to address legitimate concerns Microsoft has raised with respect to the protection of its source code. As such, pending the entry of a Protective Order, PDIC expects that Microsoft will produce documents and make source code available to PDIC for inspection.

We look forward to discussing this further with you. In the meantime, please call me should you have any questions regarding this matter.

Sincerely,

*/s/ Jeffrey S. Pollack*

Jeffrey S. Pollack

JSP

# IN THE UNITED STATES DISTRICT COURT
## FOR THE WESTERN DISTRICT OF WASHINGTON

| | | |
|---|---|---|
| PRINCETON DIGITAL IMAGE CORPORATION, | § § § | |
| Movant | § § § | |
| | § | Misc. Case No. _____ |
| v. | § § | |
| MICROSOFT CORPORATION | § § § | |
| | § § | |
| Respondent. | § | |

## [PROPOSED] PROTECTIVE ORDER

This protective order has been submitted by the parties through their respective counsel that, in order to facilitate document disclosure and production under the Local Rules of this Court and the Federal Rules of Civil Procedure, the following Protective Order ("Order") be entered by the Court. This Order shall remain in effect pursuant to ¶ 15 through the conclusion of the underlying litigation currently pending before the United States District Court for the Eastern District of Texas captioned *Princeton Digital Image Corporation v. Canon, Inc., et al.*, No. 2:10-cv-00029-TJW (the "underlying litigation") or, in the event that this action is transferred to another jurisdiction, the completion of litigation in that jurisdiction.

In support of this Order, this Court finds that:

Princeton Digital Corporation ("PDIC") served Microsoft Corporation ("Microsoft") with a subpoena pursuant to which Confidential Information is likely to be disclosed or produced.

Microsoft asserts that public dissemination and disclosure of Confidential Information could severely injure or damage it and could place it at a competitive disadvantage;

Counsel for PDIC is presently without sufficient information to accept the

representation(s) made by Microsoft as to the confidential, proprietary, and/or trade secret nature

of such Confidential Information; and

To protect the respective interests of Microsoft and to facilitate the progress of disclosure

and discovery pursuant to PDIC's subpoena, the following Order should issue:

IT IS THEREFORE ORDERED THAT:

1.      Any document, electronically stored information ("ESI"), or thing being produced

or disclosed by Microsoft that Microsoft reasonably and in good faith believes constitutes or

discloses a trade secret or other proprietary or confidential business, technical, sales, marketing,

financial, or other commercial information that Microsoft would not disclose to third parties or

that it would cause third parties to maintain in confidence, Microsoft may designate such

document, ESI, or thing "Confidential" (collectively "Confidential Information").  Hereinafter,

for purposes of this Order, the term "document" or "Document" also includes ESI.

Confidential Information may further include, but is not limited to:  technical information

such as product design and operation and manufacturing techniques or processing information,

trade secrets, formulas, research and development information, source code, object code, sales

and cost information, pricing information, patent license agreements, information that was

generated in connection with, or reveals the content of, patent licensing negotiations, information

that Microsoft has treated as confidential and is not subject to public disclosure, information

within the definition of trade secret as set forth in Section 1(4) of the Uniform Trade Secrets Act

(1985), and any other information that would qualify as confidential pursuant to Rule 26(c) of

the Federal Rules of Civil Procedure or any other legal standard.

Confidential Information shall not include information or material that (a) was, is, or becomes public in a manner other than by violation of this Order; (b) is acquired by PDIC from a third party having the right to disclose such information or material; (c) was already lawfully possessed by PDIC before the disclosure by Microsoft; or (d) was independently developed by PDIC by personnel who did not receive or have access to Microsoft's Confidential Information.

2.      **Protected Documents.**  Documents, discovery responses, and any other physical object containing Confidential Information produced by a Designating Party are referred to herein collectively as "Protected Documents."

3.      **Designation.**  Protected Documents designated as "CONFIDENTIAL" may include, but are not limited to, confidential technical, marketing, business and trade information unknown to the public.  Protected Documents designated as "OUTSIDE COUNSEL ONLY" shall include, but are not limited to, highly confidential and sensitive information related to research, development, design, sales, marketing, manufacturing or other activities that Microsoft reasonably and in good faith believes is so highly sensitive that its disclosure to persons other than those specified in ¶ 6 could reasonably be expected to result in injury to Microsoft. Protected Documents designated as "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE" shall include Confidential Information described in Exhibit C.  The identification of Protected Documents with any of these designations is referred to herein as "Confidential Designation" or "Designated Under This Protective Order."

Microsoft may make Confidential Designations on such Protected Documents for which Microsoft believes in good faith that there is a right to confidential treatment under Rule 26 of the Federal Rules of Civil Procedure or this Order consistent with the designation level.

Microsoft represents that such information does exist, and that it has historically maintained such informational confidential in the ordinary course of business, and will continue to do so.

If it comes to Microsoft's attention that Protected Documents that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, Microsoft must promptly notify PDIC that it is withdrawing the mistaken designation.

4. **General Use and Disclosure of Confidential Information.** Confidential Information, whether embodied in a Protected Document or not, shall not be used or revealed, shown, disseminated, copied, or in any way communicated to anyone by PDIC for any purpose whatsoever, except as provided herein.

5. **Use and Disclosure of "CONFIDENTIAL" Documents.** Protected Documents designated as "CONFIDENTIAL" and any information contained therein may be revealed or shown only for purposes of the underlying litigation to the following persons or entities:

    a.    This Court and its personnel;

    b.    The Court presiding over the underlying litigation and its personnel;

    c.    Outside Counsel for PDIC (as used herein, "Outside Counsel" shall mean attorneys retained to represent any party in this miscellaneous action and the underlying litigation);

    d.    Employees of such Outside Counsel (excluding experts, consultants, and investigators) assigned to and necessary to assist such counsel in the preparation and trial of this litigation;

    e.    Employees of PDIC who are reasonably necessary for development and presentation of the claims or defenses in the underlying litigation;

    f.    Employees of any professional photocopy service or graphics design service, legal interpreters or translators, or jury consultants (including mock jurors, focus group members, and the like) used by Outside Counsel;

    g.    Court reporters taking testimony in this miscellaneous action and the underlying litigation and their necessary stenographic, videographic, and clerical personnel;

h.     Any author or recipient (actual or reasonably believed) of such Protected Documents designated as "CONFIDENTIAL";

i.     Personnel of third party vendors engaged by PDIC or by Outside Counsel to assist in (i) the coding, imaging, or other management of documents produced in discovery in the underlying litigation; (ii) the preparation of demonstrative exhibits or other visual aids for presentation at a hearing or trial; or (iii) jury research and analysis, provided that such personnel of third party vendors shall not be employees of a party;

j.     Any independent consultant, investigator, or expert retained by, or at the direction of, PDIC or its Outside Counsel to assist in the preparation for the underlying litigation or to testify at trial or other hearing, provided that the Protected Documents or any information contained therein disclosed to the independent consultant, investigator, or expert pertain to the expected consultation or testimony of such person.  The Protected Documents may be shown to assistants and staff associated with and acting under the supervision of such independent consultant, investigator, or expert; and

k.     To Outside Counsel for the defendants in the underlying litigation and employees of the defendants in the underlying litigation who are reasonably necessary for development and presentation of the claims or defenses in the underlying litigation.  If "Confidential" documents are disclosed to Outside Counsel or defendants' employees in the underlying litigation, such disclosure shall be done pursuant to an appropriate protective order entered in the underlying litigation and subject to the same, equivalent, or more restrictive confidentiality designation as the designation chosen by Microsoft pursuant to this Order.

6.     **Use and Disclosure of "OUTSIDE COUNSEL ONLY" Documents.**  Protected Documents designated as "OUTSIDE COUNSEL ONLY" and any information contained therein may be revealed or shown only for purposes of the underlying litigation to the following persons or entities:

a.     This Court and its personnel;

b.     The Court presiding over the underlying litigation and its personnel;

c.     Outside Counsel for PDIC

d.      Employees of such Outside Counsel (excluding experts, consultants, and investigators) assigned to and necessary to assist such counsel in the preparation and trial of this litigation;

e.      Employees of any professional photocopy service or graphics design service, legal interpreters or translators, or jury consultants (including mock jurors, focus group members, and the like) used by counsel;

f.      Court reporters taking testimony in this miscellaneous action and the underlying litigation and their necessary stenographic, videographic, and clerical personnel;

g.      Any author or recipient (actual or reasonably believed) of such Protected Documents designated as "CONFIDENTIAL";

h.      Personnel of third party vendors engaged by PDIC or by Outside Counsel for a party to assist in (i) the coding, imaging, or other management of documents produced in discovery in the underlying litigation; (ii) the preparation of demonstrative exhibits or other visual aids for presentation at a hearing or trial; or (iii) jury research and analysis, provided that such personnel of third party vendors shall not be employees of a party;

i.      Any independent consultant, investigator, or expert retained by, or at the direction of, PDIC or its Outside Counsel to assist in the preparation for this litigation or to testify at trial or other hearing, provided that the Protected Documents or any information contained therein disclosed to an independent consultant, investigator, or expert pertain to the expected consultation or testimony of such person.  The Protected documents may be shown to assistants and staff associated with and acting under the supervision of such independent consultant, investigator, or expert; and

j.      To Outside Counsel for the defendants in the underlying litigation.  If "Outside Counsel Only" documents are disclosed to Outside Counsel in the underlying litigation, such disclosure shall be done pursuant to an appropriate protective order entered in the underlying litigation and subject to the same, equivalent, or more restrictive confidentiality designation as the designation chosen by Microsoft pursuant to this Order.

7.      **Filings With This Court.**  Protected Documents that have been designated

"CONFIDENTIAL", "OUTSIDE COUNSEL ONLY" and/or "CONFIDENTIAL-OUTSIDE

COUNSEL ONLY-SOURCE CODE" under this Protective Order may be filed as sealed

documents with this Court and in the underlying litigation.  Such Protected Documents shall be

filed in accordance with the Local Rules of this Court and the court presiding over the underlying

litigation, and shall include on a cover page one of the following statements, whichever is

appropriate:

"FILED UNDER SEAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER"

or

"FILED UNDER SEAL

OUTSIDE COUNSEL ONLY - SUBJECT TO PROTECTIVE ORDER"

or

"FILED UNDER SEAL

CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE

SUBJECT TO PROTECTIVE ORDER".

8.      **Undertaking.**  Prior to any disclosure pursuant to ¶¶ 5(j) and 6(i), each

consultant, investigator, and testifying and consulting expert to whom such disclosure is to be

made shall execute the Confidentiality Agreement annexed hereto as Exhibit A ("Confidentiality

A Agreement").  Each person to whom any disclosure is made pursuant to ¶ 5(e) shall execute

the Confidentiality Agreement annexed hereto as Exhibit B ("Confidentiality B Agreement").

The Confidentiality Agreements shall be maintained by Outside Counsel for PDIC with whom

such persons are affiliated or by whom they are retained, and such counsel shall promptly

provide a copy of each executed Confidentiality A or B Agreement to counsel for Microsoft.

9.      **Use of Confidential Information at Depositions.**  To the extent that Confidential

Information, as embodied in Protected Documents or otherwise, is used in depositions, such

Confidential Information shall remain subject to the provisions of this Order, along with the

transcript pages of the deposition testimony referring to the Confidential Information.

Additionally, the parties may, within thirty (30) calendar days of receipt of the final transcript of a deposition, designate documents, things, materials or information disclosed in that deposition as either "CONFIDENTIAL", "OUTSIDE COUNSEL ONLY" and/or "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE" as the nature of the information involved requires. Absent agreement of the parties to the contrary, until the expiration of such period, all documents, things, materials or information in a deposition shall be treated as "OUTSIDE COUNSEL ONLY." If any party designates testimony to be given at a deposition "CONFIDENTIAL", "OUTSIDE COUNSEL ONLY" and/or "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE" during the deposition, all persons not qualified to receive such information shall leave the deposition for that portion of the testimony.

10.    **Disclosure to Author, Recipient, or Producing Party.** Nothing herein is intended in any way to restrict the ability of counsel to use "CONFIDENTIAL", "OUTSIDE COUNSEL ONLY" and/or "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE" material in examining or cross-examining any employee, future employee, agent, expert or consultant of Microsoft, or any person who authored, received or is a named recipient of or otherwise has actual prior knowledge of the "CONFIDENTIAL", "OUTSIDE COUNSEL ONLY" and/or "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE" material.

11.    **Source Code.** The discovery of Source Code shall be governed by the provisions set forth in the Protocol for the Discovery of Source Code, attached as Exhibit C.

12.    **Reservation of Power by Court.** The Court reserves the power and authority to remove documents and materials from the scope of this Order if it finds documents or materials designated by the parties do not constitute material properly described as protectable by Fed. R. Civ. P. 26(c) or this Order.

13.     **Subpoena of Confidential Information.**  In the event PDIC receives a subpoena or other process or order or discovery request to produce any Confidential Information or Protected Documents in another, unrelated legal proceeding, from a non-party to this miscellaneous action or the underlying litigation, PDIC (i) shall promptly notify counsel for Microsoft of the subpoena or other process or order or discovery request, and (ii) shall not produce the information until Microsoft has had reasonable time (at least fourteen (14) days) to object or take other appropriate steps to protect the information .  Microsoft shall have the burden of defending against such subpoena or other process or order or discovery request.

14.     **Continuing Jurisdiction.**  After termination of the underlying litigation, the provisions of this Order shall continue to be binding until further Order of this Court, except with respect to those documents and information that become a matter of public record.  This Court retains and shall have continuing jurisdiction over the parties for enforcement of the provisions of this Order following termination of the underlying litigation.

15.     **Duty to Return Documents and Things.**  Within sixty (60) days after the entry of a final non-appealable judgment or order concluding the underlying litigation or the complete settlement of all claims asserted against all parties in the underlying litigation, PDIC and all other parties to the underlying litigation who received Protected Documents designated "CONFIDENTIAL",  "OUTSIDE COUNSEL ONLY" and/or "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE" shall destroy the Protected Documents or return the Protected Documents to the counsel for Microsoft.  Outside Counsel for PDIC and any other party to the underlying litigation shall provide written certification of compliance with this provision to counsel for Microsoft within ninety (90) days after the entry of a final non-appealable judgment or order concluding this action or the complete settlement of all claims

asserted against all parties in the above-captioned action.  The party receiving such Protected

Documents shall not use such Protected Documents or any information contained therein for any

purpose whatsoever other than the litigation between the parties in the underlying litigation, and

shall not under any circumstances sell, offer for sale, advertise, or publicize such Protected

Documents or any information contained therein.  Notwithstanding the foregoing, counsel of

record in this and the underlying litigation may retain their attorney work product and all papers

filed with any court that include any Confidential Information or Protected Documents.

16.    **Scope of Order.**  This Order shall be binding upon the parties and their attorneys,

successors, executors, personal representatives, administrators, heirs, legal representatives,

assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or

organizations over which they have control.

**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

Dated: _____, 2011

Respectfully submitted,

DUANE MORRIS LLP

By: _____

Gregory M. Luck
gmluck@duanemorris.com
Thomas W. Sankey
twsankey@duanemorris.com
Diana M. Sangalli
dmsangalli@duanemorris.com
Wesley W. Yuan
wwyuan@duanemorris.com
1330 Post Oak Blvd, Suite 800
Houston, TX 77056-3166
(713) 402-3900 (phone)
(713) 402-3901 (facsimile)

Jeffrey S. Pollack
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103
(215) 979-1299 (phone)
(215) 689-4942 (facsimile)

**ATTORNEYS FOR PRINCETON DIGITAL
IMAGE CORPORATION**

SHOOK, HARDY & BACON LLP

By: _____

Jessie J. Camacho
Patrick A. Lujin
2555 Grand Boulevard
Kansas City, Missouri 64108
(816) 474-6550 (phone)
(816) 421-5547 (facsimile)

**ATTORNEYS FOR MICROSOFT
CORPORATION**

## IN THE UNITED STATES DISTRICT COURT
## FOR THE WESTERN DISTRICT OF WASHINGTON

| | | |
|---|---|---|
| **PRINCETON DIGITAL IMAGE CORPORATION,** | § § § § | |
| **Movant** | § § | **Misc. Case No. _____** |
| **v.** | § § § | |
| **MICROSOFT CORPORATION** | § § § | |
| **Respondent.** | § § § | |

## EXHIBIT A

## CONFIDENTIALITY AGREEMENT AND UNDERTAKING
## FOR EXPERTS RECEIVING "CONFIDENTIAL", "OUTSIDE COUNSEL ONLY"
## OR "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE" INFORMATION

I, _____, state the following:

1.      I have been retained by _____ [party] to serve as an expert

in the above-captioned action.

2.      My address is _____

3.      My present employer is and the address of my present employment is __

_____

4.      My present occupation or job description is: _____

_____

5.      I have received a copy of the Protective Order in this miscellaneous action and the

underlying litigation and I have carefully read and understand the provisions of this Protective

Order.

6.      I will comply with all of the provisions of the Protective Order.

7.      I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this miscellaneous action and the underlying litigation any Confidential Information, including such information designated "CONFIDENTIAL", "OUTSIDE COUNSEL ONLY" and/or "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE", that is disclosed to me.

8.      I will advise any necessary assistant of mine, to the extent permitted under the Protective Order, of the confidential nature of any Confidential Information that I disclose to such assistant and will be responsible for assuring that such assistant complies with the same obligations of confidentiality to which I am hereby agreeing.

9.      I will destroy or return all Confidential Information that comes into my possession, and all notes, documents, or things that I prepare relating thereto, to counsel from whom I received the information.

10.     If I am given access to Source Code designated "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE," I agree to abide by all terms of the Protective Order concerning such Source Code, including the Protocol for the Discovery of Source Code.

11.     I hereby submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcement of this Undertaking pursuant to the Protective Order.

Signature: _____
Printed Name: _____
Date: _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

PRINCETON DIGITAL IMAGE
CORPORATION,

§
§
§
§

          Movant

§
§

**Misc. Case No. _____**

v.

§
§

MICROSOFT CORPORATION

§
§
§
§

          Respondent.

§

**EXHIBIT B**

**<u>CONFIDENTIALITY AGREEMENT</u>**

I, _____ , state the following:

1.     My address is _____

_____

2.     My present employer is and the address of my present employment is___

_____

3.     My present occupation or job description is: _____

_____

4.     I have received a copy of the Protective Order in this lawsuit and I have carefully

read and understand the provisions of this Protective Order.

5.     I will comply with all of the provisions of the Protective Order.

6.     I attest to my understanding that access to Confidential Information designated as

"CONFIDENTIAL", "OUTSIDE COUNSEL ONLY" and/or "CONFIDENTIAL-OUTSIDE

COUNSEL ONLY-SOURCE CODE" may be provided to me and that such access shall be

pursuant to the terms and conditions and restrictions of the Protective Order. I agree to be bound

by the terms of the Protective Order, both with respect to this Court's powers of supervision of

this miscellaneous action and contractually to Microsoft, which I acknowledge to be an expressly

intended beneficiary of the undertakings I give in this Confidentiality Agreement.

7.	I hereby submit to the jurisdiction of the United States District Court for the

Western District of Washington for the purpose of enforcement of this Undertaking pursuant to

the Protective Order.

Signature:  _____

Printed Name:  _____

Date:  _____

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF WASHINGTON**

| | | |
|---|---|---|
| PRINCETON DIGITAL IMAGE CORPORATION, | § § § § | |
| Movant | § § | **Misc. Case No. _____** |
| v. | § § | |
| MICROSOFT CORPORATION | § § § | |
| Respondent. | § § | |

**EXHIBIT C**

**PROTOCOL FOR THE DISCOVERY OF SOURCE CODE**

**A.** **Definitions**

1. "Source Code": Any human-readable programming language text that defines software, firmware, or electronic hardware descriptions. Text files containing source code shall hereinafter be referred to as "Source Code Files." Source Code Files include, but are not limited to, files containing source code in C, C++, Java, assembler, VHDL, Verilog, digital signal processor (DSP) and other similar programming languages. Source Code Files further include "make" and "build" files, link files, scripts, and other human-readable text files used in the generation and/or building of software directly executed on a microprocessor, microcontroller, or DSP.

2. "CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE": Confidential Information that (i) may be designated OUTSIDE COUNSEL ONLY under the Protective Order and (ii) contains Source Code.

**B.** **Scope**

3.      Unless otherwise provided herein, Confidential Information designated

CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE will be subject to all of the

definitions, provisions and restrictions governing Confidential Information designated OUTSIDE

COUNSEL ONLY under the Protective Order.

**C.** **Access To Designated Source Code Material**

4.      Unless otherwise ordered by the Court or permitted in writing by the Designating

Party, PDIC may disclose any Confidential Information designated "CONFIDENTIAL-

OUTSIDE COUNSEL ONLY-SOURCE CODE" ("Designated Source Code Material") only to

the following persons and under the following conditions:

a.      Any author, recipient (actual or reasonably believed) of such Designated Source Code Material;

b.      Outside Counsel for PDIC;

c.      Employees of such Outside Counsel (excluding experts, consultants, and investigators) assigned to and necessary to assist such counsel in the preparation and trial of the underlying litigation;

d.      Independent consultants, investigators, or experts retained by, or at the direction of, PDIC or its Outside Counsel to whom disclosure is reasonably necessary for the underlying litigation and who have signed the Confidentiality Agreement annexed hereto as Exhibit A;

e.      This Court and the court presiding over the underlying litigation;

f.      Any designated arbitrator, mediator, or master who is assigned to hear the underlying litigation (or any part thereof), and his or her staff, who have signed the Confidentiality Agreement annexed hereto as Exhibit B; and

g.      Court reporters taking testimony in this miscellaneous action and the underlying litigation and their necessary stenographic, videographic, and clerical personnel.

5.      Where materials are Designated Source Code Material, this section shall apply

thereto in addition to the other provisions of this Protective Order.  PDIC and Microsoft agree

6

that, at Microsoft's option, in lieu of or in addition to providing such materials on computer readable storage media, Microsoft may produce such materials by making them available on a computer provided by Microsoft at the offices of its outside counsel, Shook, Hardy & Bacon LLP, located in Washington, DC ("the designated facility"). If Microsoft elects to produce such materials at a the designated facility, it shall be responsible for all costs and expenses associated with the designated facility. Such materials shall be made available for inspection by the persons to whom disclosure is authorized pursuant to this Protective Order, at a mutually convenient time at the designated facility.

6. In the event that Microsoft produces the Designated Source Code Material at the designated facility on a computer (the "Source Code Computer"), Microsoft shall be obligated to install such tools or programs necessary to review and search the code produced on the platform provided by Microsoft.

7. Microsoft shall make available a laser printer with commercially reasonable printing speeds for on-site printing during inspection of Designated Source Code Material. PDIC may print out Designated Source Code Material for use by its attorneys and independent consultants, investigators or experts. Each page must be marked with the CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE designation and production-numbered in a manner agreed upon by Microsoft and PDIC.

8. In the event that Microsoft elects to produce the Designated Source Code Material on a computer readable storage media in lieu of production at the designated facility, Microsoft shall produce the Designated Source Code Material in a format that is readable and searchable by a standard source code review tool or program. In the event that access to the Designated Source Code Material on the computer readable storage medium restricted, such as by encryption or

7

password protection, Microsoft shall separately provide all necessary information (e.g., decryption key, password) to access and read the Designated Source Code Material at the same time that Microsoft produces the computer readable storage medium.

9.      In the event that excerpts of Designated Source Code Material are included in a pleading, exhibit, expert report, discovery document, deposition transcript, or Court document, such documents shall be designated CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE.

10.      Access to and review of the Designated Source Code Material shall be strictly for the purpose of investigating the claims and defenses at issue in the underlying litigation.  No person shall review or analyze any Designated Source Code Material for purposes unrelated to this case, nor may any person use any knowledge gained as a result of reviewing Designated Source Code Material in this case in any other pending or future dispute, proceeding, or litigation.

11.      The United States District Court for the Western District of Washington is responsible for the interpretation and enforcement of this Order's Protocol for the Discovery of Source Code.  All disputes concerning Designated Source Code Material produced under the protection of this Order shall be resolved by the United States District Court for the Western District of Washington.  Every individual who receives any Designated Source Code Material agrees to subject himself or herself to the jurisdiction of this Court for the purpose of any proceedings related to performance under, compliance with, or violation of this Order's Protocol for the Discovery of Source Code.

12.      The Court reserves the right, upon Motion or upon its own Motion, to amend or modify this Order's Protocol for the Discovery of Source Code for good cause shown.

# EXHIBIT
# "E"

| | |
|---|---|
| **From:** | Camacho, Jesse J. (SHB) <JCAMACHO@shb.com> |
| **Sent:** | Wednesday, December 07, 2011 2:16 PM |
| **To:** | Pollack, Jeffrey S. |
| **Cc:** | Luck, Gregory M.; Lujin, Patrick A. (SHB); Gross, Michael J. (SHB); Donaldson, Karen S. (SHB); Bliler, Melinda Morrison; Sangalli, Diana M. |
| **Subject:** | RE: Microsoft's Response to Princeton Digital's Subpoena of 09/26/2011 - re PDIC v. Canon (2:10-cv-00029) |

12/07/11

Jeff,

We are happy to follow up, and do so by way of this email.  Microsoft understands that J. Folsom considers discovery to be stayed in the Texas litigation.  On 10/13/11, he Ordered that all dates be stayed.

With the discovery period stayed in the underlying litigation, Microsoft considers improper PDIC's pursuit of discovery from nonparty Microsoft.  Microsoft would not expect to receive any additional requests for discovery until the period for discovery in the underlying litigation re-opens (which, if the case is ultimately transferred to SDNY, would not be before discovery is proper under the Rules).

If that time comes, Microsoft would further expect to **first be provided with** the information that is requested below; namely, information similar to **the Exhibits** referenced in PDIC's infringement contentions, and on a **per-product** and per-feature basis.  We continue to remind you of your duty under Rule 45(c)(1) to avoid imposing an undue burden on third-party Microsoft.  For example, presenting terms such as "Office" in your letter seems inconsistent with such duty, not only because software such as "Word" and "Excel" are named alongside "Office" in your letter (and are already part of the term Office), but also because no attempt at all is made to be specific as to which versions of Office, which software components of Office, which features, and what functionality of those features.  Providing a swath of general and high-level names of products or product categories runs afoul of avoiding imposing an undue burden on Microsoft.  Please let us know when discovery re-opens, and we look forward to receiving the information that we have requested.  Thank  you,
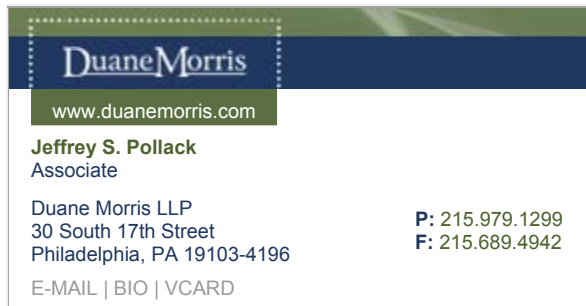
Jesse
816-559-2173 | 12005 | jcamacho@shb.com

**From:** Pollack, Jeffrey S. [mailto:JSPollack@duanemorris.com]
**Sent:** Wednesday, November 30, 2011 2:37 PM
**To:** Camacho, Jesse J. (SHB)
**Cc:** Luck, Gregory M.; Lujin, Patrick A. (SHB); Gross, Michael J. (SHB); Donaldson, Karen S. (SHB); Bliler, Melinda Morrison; Sangalli, Diana M.
**Subject:** RE: Microsoft's Response to Princeton Digital's Subpoena of 09/26/2011 - re PDIC v. Canon (2:10-cv-00029)

Jesse:  Thank you for your email.  We look forward to hearing from you regarding the Protective Order and when Microsoft will produce documents responsive to the subpoena.

Regards,

Jeff

**Duane Morris**

www.duanemorris.com

**Jeffrey S. Pollack**
Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196

**P:** 215.979.1299
**F:** 215.689.4942

E-MAIL | BIO | VCARD

**From:** Camacho, Jesse J. (SHB) [mailto:JCAMACHO@shb.com]
**Sent:** Tuesday, November 22, 2011 6:04 PM
**To:** Pollack, Jeffrey S.
**Cc:** Luck, Gregory M.; Lujin, Patrick A. (SHB); Gross, Michael J. (SHB); Donaldson, Karen S. (SHB); Bliler, Melinda Morrison; Sangalli, Diana M.; Camacho, Jesse J. (SHB)
**Subject:** Microsoft's Response to Princeton Digital's Subpoena of 09/26/2011 - re PDIC v. Canon (2:10-cv-00029)

11/22/11

Hi Jeff,

Thank you for your Nov 14th letter.  We will review your letter and this matter and then get back to you.  It may take some time due to the holidays.  I did want to clarify that Microsoft disagrees with various characterizations in your letter.  For example (with reference to the third paragraph of page 2), I did not concede that any Microsoft product was relevant to PDIC's claims.  Rather than take time to go through each characterization, please note that Microsoft does not now, by silence or otherwise, intended to convey agreement that any such representations of our positions are accurate.  Nothing should be viewed as a waiver in any regard. Microsoft expressly reserves all its rights including the right to clarify or correct assertions at the appropriate time.  By way of cordial reminder, please keep in mind the affirmative duty set forth in Rule 45 that is owed to Microsoft:

> A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

Fed. R. Civ. P. 45(c)(1).  In the meantime,  could you please provide copies of the results of your completed analysis that reflect your bases for naming each product in your letter.  We note that Dkt. No. 99-3 from the Texas case (attached) refers to "Exhibits 11-13," which purport to "illustrate the encoding of a sample . . . ."  *See e.g.*, PDF p. 5 and also pp. 8, 11, 15.  Thus, for each product named in your letter, please provide respective counterparts to Exhibits 11-13.  I've reattached your letter for convenience.  Thank you,

Jesse

**Shook, Hardy & Bacon L.L.P.**

**Jesse J. Camacho**
*Partner*
2555 Grand Boulevard
Kansas City, MO 64108
PHONE: 816.559.2173
FAX: 816.421.5547
JCAMACHO@shb.com

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**From:** Pollack, Jeffrey S. [mailto:JSPollack@duanemorris.com]
**Sent:** Monday, November 14, 2011 10:35 PM
**To:** Camacho, Jesse J. (SHB); Yuan, Wesley W.
**Cc:** Luck, Gregory M.; Lujin, Patrick A. (SHB); Gross, Michael J. (SHB); Donaldson, Karen S. (SHB); Bliler, Melinda Morrison; Sangalli, Diana M.
**Subject:** Microsoft's Response to Princeton Digital's Subpoena of 09/26/2011 - re PDIC v. Canon (2:10-cv-00029)

Jesse:  Please see the attached correspondence.

Regards,

Jeff

For more information about Duane Morris, please visit http://www.DuaneMorris.com

Mail Gate made the following annotations on Tue Nov 22 2011 17:04:01

Mail Gate made the following annotations on Wed Dec 07 2011 13:15:31

# EXHIBIT
# "F"

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

| | | |
|---|---|---|
| **PRINCETON DIGITAL IMAGE CORPORATION,** | § § § | |
| **Plaintiff** | § § | **Case No. 2:10-cv-00029-DF** |
| **v.** | § § | |
| **CANON INC., CANON U.S.A., INC., HEWLETT-PACKARD COMPANY, FUJIFILM NORTH AMERICA CORPORATION F/K/A FUJIFILM U.S.A., INC. and XEROX INTERNATIONAL PARTNERS,** | § § § § § § § | |
| **Defendants.** | § § | **JURY TRIAL DEMANDED** |

**ORDER**

Upon the filing of the Joint Motion For Entry Of Order Suspending Deadlines, the issues

having been briefed by the parties, the Court, having been given due deliberation thereto, finds

that the Joint Motion should be GRANTED.

It is therefore ORDERED that in light of the Order granting Defendants' Motion to

Transfer Venue [Dkt. No. 143], the Court hereby suspends any and all pending deadlines

pursuant to the Local Patent Rules and the Court's Docket Control Order [Dkt. No. 69] and

Discovery Order [Dkt. No. 70] until such time as the Court has ruled on PDIC's Motion for

Reconsideration [Dkt. No. 146] of the Order granting Defendants' Motion to Transfer Venue.  In

addition, in the event the Court denies PDIC's Motion for Reconsideration, the Court vacates any

and all such deadlines pending transfer of the case to the Southern District of New York.

**SIGNED this 13th day of October, 2011.**

_____
DAVID FOLSOM
UNITED STATES DISTRICT JUDGE