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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC, et al.,

Defendants.

CASE NO. C10-1823JLR

ORDER REGARDING
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

MOTOROLA MOBILITY, INC., et
al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

1 Following this order, the court will issue its Findings of Fact and Conclusions of
2 Law (the “Findings and Conclusions”) determining a reasonable and non-discriminatory
3 royalty rate and range for Motorola’s standard essential patents. The Findings and
4 Conclusions will be filed under seal to afford the parties an opportunity to redact
5 confidential and proprietary information contained therein consistent with the following
6 guidance.

7 The court reminds the parties that in the Ninth Circuit, “compelling reasons” in
8 favor of sealing must be shown for redactions to records and testimony presented at trial.
9 Indeed, historically, courts have recognized a “general right to inspect and copy public
10 records and documents, including judicial records and documents.” *Nixon v. Warner*
11 *Comm’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978). “Unless a particular court record is one
12 ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.
13 *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting
14 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). In order to
15 overcome this strong presumption, a party seeking to seal a judicial record must articulate
16 justifications for sealing that outweigh the public policies favoring disclosure. *See*
17 *Kamakana* at 1178-79. “[T]he resolution of a dispute on the merits, whether by trial or
18 summary judgment, is at the heart of the interest in ensuring the ‘public’s understanding
19 of the judicial process and of significant public events.’” *Kamakana*, 447 F.3d at 1179
20 (quoting *Valley Broadcasting Co. v. U.S. Dist. Court for Dist. of Nev.*, 798 F.2d 1289,
21 1294 (9th Cir. 1986)). Thus, a party seeking to seal a judicial record attached to a
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1 | dispositive motion or presented at trial must articulate “compelling reasons” in favor of
2 | sealing. *See Kamakana* at 1178.

3 | Consistent with the Ninth Circuit standard, under the court’s local rules, “[t]here is
4 | a strong presumption of public access to the court’s files.” Local Rules W.D. Wash. CR
5 | 5(g). To rebut this presumption, the local rules require that any party filing a motion to
6 | seal must include in that motion:

7 | (A) a certification that the party has met and conferred with all other parties
8 | in an attempt to reach agreement on the need to file the document under
9 | seal, to minimize the amount of material filed under seal, and to explore
10 | redaction and other alternatives to filing under seal; this certification
11 | must list the date, manner, and participants of the conference.

12 | (B) a specific statement of the applicable legal standard and the reasons for
13 | keeping a document under seal, with evidentiary support from
14 | declarations where necessary.

15 | Local Rules W.D. Wash. CR 5(g)(3).

16 | During the trial, the courtroom was closed to the public for several portions of
17 | witness testimony. Any redactions to the court’s Findings and Conclusions shall be
18 | limited to testimony elicited during times the courtroom was closed to public viewing.
19 | Moreover, the court instructs the parties to seek redactions to only the portions of the
20 | Findings and Conclusions necessary to protect the confidential or proprietary
21 | information. The parties are strongly encouraged to redact single words or numbers, as
22 | opposed to entire sentences.

23 | Additionally, the court’s Findings and Conclusions reference deposition
24 | designations of the parties. The court will file the entirety of the parties’ deposition

1 designations after the parties have an opportunity to redact confidential and proprietary
2 information.

3 With the foregoing guidance, the court ORDERS the parties, no later than 12:00
4 p.m. on April 25, 2013, to file (1) a proposed joint redacted version of the court's
5 Findings and Conclusions; and (2) a proposed joint redacted version of the parties'
6 deposition designations. The court schedules a telephonic hearing for April 26, 2013 at
7 9:00 a.m. to hear argument on any redactions where the parties disagree and to make
8 conclusive rulings on which redactions meet the compelling reasons standard.

9 Dated this 19th day of April, 2013.

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12 JAMES L. ROBART
13 United States District Judge
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