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HYPERMEDIA NAVIGATION, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

HYPERMEDIA NAVIGATION LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 4:18-cv-00670-HSG

**STIPULATION AND ORDER RE
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION FOR PATENT
LITIGATION**

Upon the stipulation of the parties, the Court ORDERS as follows:

1. This Order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination of this action, as required by Federal Rule of Civil Procedure 1.”

1 2. This Order may be modified in the Court's discretion or by stipulation.

2 3. As in all cases, costs may be shifted for disproportionate ESI production requests
3 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party's nonresponsive or dilatory
4 discovery tactics are cost-shifting considerations.

5 4. A party's meaningful compliance with this Order and efforts to promote efficiency
6 and reduce costs will be considered in cost-shifting determinations.

7 5. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
8 shall not include email or other forms of electronic correspondence (collectively "email"). To
9 obtain email parties must propound specific email production requests.

10 6. The parties may use keyword searches to assist in identifying relevant, non-
11 privileged ESI responsive to requests for production. The parties shall not be required to search
12 for or preserve information stored at locations that are inaccessible or accessible only through
13 extraordinary measures, including backup systems/tapes, disaster recovery systems, residual,
14 deleted, fragmented, damaged or temporary data, and/or encrypted data where the key or password
15 cannot be ascertained after reasonable efforts. Additionally, the parties need not search for or
16 preserve information stored solely on personal digital assistants, mobile phones, voicemail
17 systems, instant messaging systems, and social media (such as Facebook or Twitter).

18 7. The parties shall not be required to suspend automated deletion that is associated
19 with electronic databases, server log files, or backup or disaster recovery systems. With respect to
20 web pages, the parties need only make good faith efforts to preserve the source code responsible
21 for the dynamic generation of such pages, not the actual content(s) of such pages.

22 8. Email production requests shall only be propounded for specific issues, rather than
23 general discovery of a product or business. Prior to any production of emails, the parties shall
24 meet and confer and discuss and explain the necessity of the requested email production.

25 9. Email production requests shall be phased to occur after the parties have exchanged
26 initial disclosures and basic documentation about the patents, the prior art, the accused
27 instrumentalities, and the relevant finances. While this provision does not require the production
28

1 of such information, the Court encourages prompt and early production of this information to
2 promote efficient and economical streamlining of the case.

3 10. Email production requests shall identify the custodian, search terms, and time
4 frame. The parties shall cooperate to identify the proper custodians, proper search terms and
5 proper timeframe as set forth in the Guidelines.

6 11. Each requesting party shall limit its email production requests to a total of three
7 custodians per producing party for all such requests. The parties may jointly agree to modify this
8 limit without the Court's leave. The Court shall consider contested requests for additional
9 custodians, upon showing a distinct need based on the size, complexity, and issues of this specific
10 case. Cost-shifting may be considered as part of any such request.

11 12. Each requesting party shall limit its email production requests to a total of five
12 search terms per custodian per party. The parties may jointly agree to modify this limit without the
13 Court's leave. The Court shall consider contested requests for additional search terms per
14 custodian, upon showing a distinct need based on the size, complexity, and issues of this specific
15 case. The Court encourages the parties to confer on a process to test the efficacy of the search
16 terms. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such
17 as the producing company's name or its product name, are inappropriate unless combined with
18 narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive
19 combination of multiple words or phrases (*e.g.*, "computer" and "system") narrows the search and
20 shall count as a single search term. A disjunctive combination of multiple words or phrases (*e.g.*,
21 "computer" or "system") broadens the search, and thus each word or phrase shall count as a
22 separate search term unless they are variants of the same word. Use of narrowing search criteria
23 (*e.g.*, "and," "but not," "w/x") is encouraged to limit the production and shall be considered when
24 determining whether to shift costs for disproportionate discovery. Should a party serve email
25 production requests with search terms beyond the limits agreed to by the parties or granted by the
26 Court pursuant to this paragraph, this shall be considered in determining whether any party shall
27 bear all reasonable costs caused by such additional discovery.
28

1 13. Nothing in this Order prevents the parties from agreeing to use technology assisted
2 review and other techniques insofar as their use improves the efficacy of discovery.

3 14. Electronic data should be provided in the following format:

4 A. *TIFFs*. Each document shall be produced in Group IV Tagged Image File
5 Format (“TIFF”) regardless of whether such documents are stored by the parties in the ordinary
6 course of business in electronic or hard copy form. When reasonably feasible, each TIFF image
7 file should be one page and should reflect how the source document would appear if printed to
8 hard copy.

9 B. *Database Load Files/Cross-Reference Files*. Documents should be provided
10 with an image load file that can be loaded into commercially acceptable production software (e.g.,
11 Concordance, Summation, Relativity). Each TIFF in a production should be referenced in the
12 corresponding image load file. The total number of documents referenced in a production’s data
13 load file shall match the total number of designated document breaks in the Image Load file(s) in
14 the production.

15 C. *Text files*. For each document, a document-level text file should be provided
16 in addition to the TIFFs. The text of native files should be extracted directly from the native file,
17 and each text file will be named using its corresponding image files (e.g., ABC0000001.TXT).
18 Documents for which text cannot be extracted will be produced with OCR.

19 D. *Hard Copy Documents*. Hard copy documents shall be scanned using
20 Optical Character Recognition (“OCR”) technology and searchable ASCII text (or Unicode text if
21 the text is in a language requiring characters outside of the ASCII character set) files shall be
22 produced. Each file shall be named with the unique Bates Number of the first page of the
23 corresponding TIFF document followed by the extension “TXT”

24 E. *Redactions*. With respect to documents containing redacted text, no text will
25 be provided for the redacted portion. OCR will be provided for the unredacted portions of the
26 documents.

1 F. *Unique IDs.* Each image should have a unique file name which will be the
2 Bates number of that page. The Bates number must appear on the face of the image in the lower
3 right corner.

4 G. *Unique Documents.* The parties agree to use reasonable efforts to de-
5 duplicate, using a verifiable process, documents within the production. If copies of a responsive
6 document are stored at more than one location within a party's possession, custody, or control, the
7 producing party shall not be required to search for or produce more than one such copy of the
8 responsive document absent a showing of good cause that the production of additional copies is
9 necessary.

10 H. *Metadata.* The parties agree to produce the following metadata for each
11 document, to the extent it is reasonably available:

- 12 • BegDoc – The unique designation for the beginning of the document.
- 13 • EndDoc – The unique designation for the end of the document
- 14 • BEGATTACH – the beginning of any attachments to the document
- 15 • ENDATTACH – the end of any attachments to the document
- 16 • Custodian – the custodian of the document
- 17 • Email Subject - Subject of the e-mail message extracted by metadata extraction
18 software
- 19 • Email From - Author of e-mail message extracted by metadata extraction
20 software
- 21 • Email To - Recipients of email message extracted from email file by metadata
22 extraction software
- 23 • Email CC - Recipients of 'Carbon Copies' of the e-mail message extracted by
24 software.
- 25 • Email BCC - Recipients of 'Blind Carbon Copies' for e-mail messages extracted
26 by software
- 27 • Date Received - Received date and time of an e-mail message (according to
28 original time zones) extracted by metadata extraction software.



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