

NON-CONFIDENTIAL

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2009-1504

MICROSOFT CORPORATION,

Defendant-Appellant,

v.

i4i LIMITED PARTNERSHIP et al.,

Plaintiffs-Appellees.

Appeal from the Eastern District of Texas

No. 6:07-CV-00113

**MOTION BY HEWLETT-PACKARD COMPANY FOR LEAVE TO FILE A  
BRIEF AS AMICUS CURIAE IN SUPPORT OF DEFENDANT-  
APPELLANT'S EMERGENCY MOTION TO STAY PERMANENT  
INJUNCTION PENDING APPEAL**

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Counsel for *Amicus Curiae*  
HEWLETT-PACKARD COMPANY

## CERTIFICATE OF INTEREST

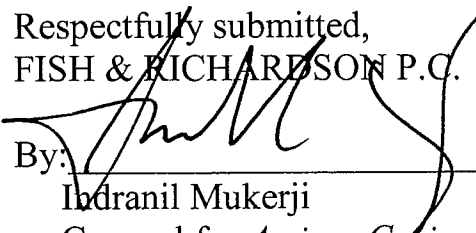
Counsel for *Amicus Curiae* HEWLETT-PACKARD COMPANY certifies the following:

1. The full name(s) of every party represented by me are:  
DELL INC. and HEWLETT-PACKARD COMPANY.
2. The name(s) of the real parties in interest represented by me are:  
DELL INC. and HEWLETT-PACKARD COMPANY.
3. All parent corporations and any publicly held companies that own 10 percent or more stock of the parties represented by me are: None.
4. The names of all law firms and the partners or associates that appeared for DELL INC. and HEWLETT-PACKARD COMPANY in the trial court or are expected to appear in this court are:

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Dated: August 24, 2009

Respectfully submitted,  
FISH & RICHARDSON P.C.  
By:   
Indranil Mukerji  
Counsel for *Amicus Curiae*  
HEWLETT- PACKARD  
COMPANY

**CONFIDENTIAL INFORMATION HAS BEEN REMOVED FROM THIS PAGE**

Pursuant to Fed. R. App. P. 29(b), Hewlett-Packard Company (“Hewlett-Packard”) hereby moves this Court for leave to file the accompanying *amicus curiae* brief in this case.

Appellant Microsoft Corp. has consented to the filing of the accompanying *amicus* brief. Counsel for Appellees could not reach their client this afternoon because he was in transit. Thus, Appellees have not taken a position on whether they will oppose Hewlett-Packard's appearance as *amici*, but they reserve the right to do so. Hewlett-Packard is therefore filing this motion to seek leave to file its brief.

Hewlett-Packard is a large distributor of the Microsoft Word software enjoined by the United States District Court for the Eastern District of Texas. The [ ] sold by Hewlett-Packard include a version of Microsoft Word. [ ]

Two factors regulating the issuance of a stay of injunction are: “whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and ... where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); accord *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 512 (Fed. Cir. 1990). Hewlett-Packard is uniquely positioned to provide evidence related to both of these factors, which supports its participation as *amicus*

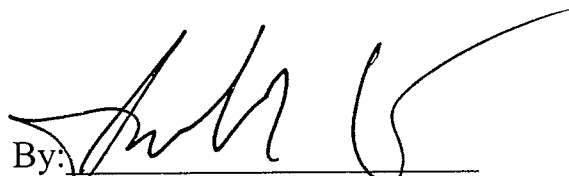
*curiae*. See *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008) (listing among factors supporting allowance of an *amicus* brief “when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide”).

For the foregoing reasons, Hewlett-Packard requests that its motion for leave to file the accompanying brief as *amicus curiae* be granted.

Dated: August 24, 2009

Respectfully submitted,

FISH & RICHARDSON P.C.

By: 

Indranil Mukerji  
Counsel for *Amicus Curiae*  
HEWLETT-PACKARD  
COMPANY

**CONFIDENTIAL MATERIAL OMITTED**

Confidential business information of Hewlett-Packard has been omitted.

The material omitted on page 1 describes the nature and magnitude of harm to Hewlett-Packard if the injunction is not stayed.

## CERTIFICATE OF SERVICE

It is hereby certified that on August 24, 2009, two true and correct copies of the attached MOTION BY HEWLETT-PACKARD COMPANY FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF DEFENDANT-APPELLANT'S EMERGENCY MOTION TO STAY PERMANENT INJUNCTION PENDING APPEAL were caused to be served on the attorneys of record at the following addresses as indicated:

<u>VIA OVERNIGHT DELIVERY</u>	
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Donald R. Dunner Jason W. Melvin Finnegan, Henderson, Farabow 901 New York Avenue, N.W. Washington, D.C. 20001-4413 Telephone: (202) 408-4062	Attorneys for Plaintiffs-Appellees i4i LIMITED PARTNERSHIP et al.

I declare under penalty of perjury of the laws of the United States of America that the above is true and correct. Executed August 24, 2009 at Washington, D.C.

  
\_\_\_\_\_  
Judith Best