
**IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

141 LIMITED PARTNERSHIP AND
INFRASTRUCTURES FOR INFORMATION INC.,

Plaintiffs-Appellees,

v.

MICROSOFT CORPORATION,

Defendant-Appellant

Appeal from the United States District Court
For the Eastern District of Texas
In Case No. 07-CV-113, Judge Leonard Davis

**MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF COMBINED
PETITION FOR PANEL REHEARING AND REHEARING EN BANC**

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Pursuant to Rules 27 and 35(e) of the Federal Rules of Appellate Procedure, Appellant Microsoft Corporation respectfully requests leave to file a reply in support of its Combined Petition for Panel Rehearing and Rehearing En Banc. In its opposition to rehearing, i4i concedes that the panel decision failed to address Microsoft's properly raised willfulness argument. Opp. 14. But i4i newly asserts that the panel opinion's error was "harmless." Microsoft asks for leave to explain why the lack of any appellate review of a finding that was required to support \$40 million in enhanced damages was not harmless and therefore requires rehearing.

Microsoft also seeks to address numerous misstatements contained in Appellee i4i's response to the combined petition. Microsoft respectfully requests the opportunity to explain how i4i has mischaracterized the panel decision and the current state of the law in highly relevant respects.

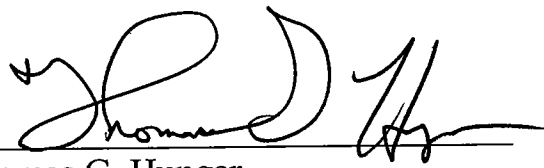
Neither the Federal Rules of Appellate Procedure nor this Court's Rules specifically allow or prohibit replies to responses to petitions for rehearing. However, both sets of rules typically allow a party seeking relief the opportunity to reply to any opposition to the relief being sought. *See, e.g.*, Fed. R. App. P. 28(c) (permitting reply brief). Indeed, Federal Rule 27 was amended in 1998 to allow replies in support of motions. *See* Fed. R. App. P. 27(a)(4). This motion for leave to file a reply is fully consistent with these rules. It is, moreover, filed within the seven-day period that the rules allow for replies in support of motions. This motion (and the

accompanying reply) will reach the Court on February 1, 2010, seven days after i4i's response was served on January 26, 2010.

For the foregoing reasons, this Court should grant Microsoft leave to file the accompanying reply to i4i's response to the Combined Petition for Panel Rehearing and Rehearing En Banc.¹

Respectfully submitted,

February 1, 2010

A handwritten signature in black ink, appearing to read 'Thomas G. Hungar', written over a horizontal line.

Thomas G. Hungar
GIBSON, DUNN & CRUTCHER LLP
Attorney for Microsoft Corporation

¹ Counsel for Microsoft has contacted counsel for i4i, and i4i has not consented to this motion.

CERTIFICATE OF INTEREST

Counsel for Defendant-Appellant certifies the following:

1. The full name of every party or amicus represented by me is: Microsoft Corporation.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: N/A.
3. All parent corporations and any publicly held companies that own 10% or more of the stock of the party or amicus curiae represented by me are: N/A.
4. There is no such corporation as listed in paragraph 3.
5. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this Court, are:

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Respectfully submitted,



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2009-1504

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MICROSOFT CORPORATION,

Defendant-Appellant.

ORDER

Upon consideration of Appellant Microsoft Corporation's Motion For Leave To File A Reply In Support Of Combined Petition For Panel Rehearing And Rehearing En Banc, it is **ORDERED** that:

The Motion is **GRANTED**. Microsoft is hereby granted leave to file a reply in support of its Combined Petition For Panel Rehearing And Rehearing En Banc.

FOR THE COURT

Date: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st Day of February, 2010, I caused two copies of the foregoing MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC to be served on the following principal counsel by email and overnight mail:

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