

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (CKK)

ORDER

Presently before the Court are the “Plaintiff Litigating States Emergency Motion to Strike Eighteen Belatedly-Named Witnesses from Microsoft’s Final Witness List,” Microsoft’s opposition thereto, the “Joint Motion of the Parties Requesting Modification of the Expert Discovery Schedule and Certain Related Pretrial Deadlines,” and the parties’ most recent Joint Status Report. Upon review of these documents and following negotiations and concessions by the parties, it is this 27th day of February, 2002, hereby

ORDERED that the motion to strike is DENIED; and it is further

ORDERED that the Litigating States may continue to depose and seek discovery in relation to the eighteen newly added Microsoft witnesses through March 18, 2002; and it is further

ORDERED that, pursuant to Microsoft’s request, Microsoft may have through March 11, 2002, to conduct its deposition of an additional third-party witness; and it is further

ORDERED that the joint motion to modify the schedule is GRANTED; and the existing

schedule is modified and/or augmented as follows:

- Motions in limine shall be filed at the earliest date possible, but not later than March 1, 2002;
- Expert depositions shall be completed not later than March 1, 2002;
- Exhibit lists containing documents each party expects to use during its “case-in-chief” shall be provided to the Court not later than March 1, 2002;
- Exhibits not appearing on the March 1, 2002, exhibit list which the parties intend to use during cross-examination or re-direct, other than impeachment by deposition, to the extent possible, shall be identified for opposing counsel not less than twenty-four hours prior to the commencement of the relevant testimony; and it is further

ORDERED that all direct testimony shall be presented in writing according to the

following procedure:

- Written direct testimony shall be provided in full to the Court three days prior to the date the witness is expected to take the stand for cross-examination;
- Simultaneous with the provision of a witness’s written direct testimony to the Court, the proponent of the witness shall provide the Court with a summary of the testimony of such witness which highlights the major points in the testimony. The summaries shall not exceed 5 pages per witness;
- Written direct testimony shall be provided to opposing counsel by 10 a.m. on Friday of the week before the witness is scheduled to testify, unless counsel agree otherwise;
- Cross-examination and re-direct testimony shall be heard live; and it is further

ORDERED that the following procedures and parameters are established for the

upcoming evidentiary hearing:

- Demonstrative and summary exhibits shall be presented to opposing counsel 48 hours in advance of the anticipated use of such exhibits. Any objection to the use of a demonstrative or summary exhibit shall be lodged with the Court 24 hours in advance of the anticipated use of such exhibit;
- The parties’ proposed findings of fact and conclusions of law shall be provided to the Court 3 weeks from the close of evidence;
- The parties shall be permitted to present closing arguments approximately 1 week following the submission of their proposed findings of fact and conclusions of law;
- The Court will address the length of closing arguments at a later point; and it is further

ORDERED, *with the consent of the parties*, that the following parameters for the presentation of testimony are established:

- Each side shall have 100 hours within which it may conduct cross-examination and re-direct testimony, inclusive of any witnesses which appear via video-recorded deposition;
- The Litigating States plan to present 16 witnesses in their case-in-chief, and Microsoft plans to present 31 witnesses in its response. After Microsoft presents its first 25 witnesses and the Litigating States have exhausted their 100 hour allotment, the Litigating States shall receive two additional hours within which to conduct cross-examination of each witness Microsoft presents in excess of 25;
- Rebuttal and sur-rebuttal will be available to the parties only upon establishment of a specific need for such testimony and with leave of the Court;
- In any event, rebuttal and sur-rebuttal shall not exceed 9 hours per side; and it is further

ORDERED that the following procedure is established for disputes, evidentiary or otherwise, which arise during the course of the hearings:

- To the extent that any dispute between the parties may be anticipated, the party seeking a ruling, whether it be a confirmation that such party may introduce a piece of disputed evidence or an in limine ruling excluding a particular piece of evidence to be offered by the opposing party, shall provide the Court and opposing counsel with notice of the issue and an informal memorandum of points and authorities in support thereof;
- Such notice shall be provided via facsimile to both the Court and opposing counsel not later than 6 p.m. on the day before the evidence in question is to be introduced;
- The party opposing any such request for ruling shall respond in kind to the proponent's informal memorandum of points and authorities via facsimile to the Court and opposing counsel by 7:30 p.m. on the day before the evidence in question will be introduced;
- Neither party's informal memorandum of points and authorities shall exceed three pages in length; and it is further

ORDERED that the Litigating States shall be permitted to substitute Michael Tiemann for Matthew Szulik on their Final Witness List, and in accordance with this substitution, Microsoft shall be afforded an extension of discovery through March 11, 2002, for the deposition

of Mr. Tiemann; and it is further

ORDERED that the hearings scheduled to commence in the above-captioned case on March 11, 2002, at 9 a.m. shall be conducted in Courtroom 11.

SO ORDERED.

COLLEEN KOLLAR-KOTELLY
United States District Judge