

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 98-1232 (TPJ)
	)	
MICROSOFT CORPORATION,	)	
	)	
Defendant.	)	
_____	)	
	)	
STATE OF NEW YORK, <i>ex rel.</i>	)	
Attorney General DENNIS C. VACCO,	)	
<i>et al.</i> ,	)	)
	)	
Plaintiffs and	)	
Counterclaim-Defendants,	)	
	)	
v.	)	Civil Action No. 98-1233 (TPJ)
	)	
MICROSOFT CORPORATION,	)	
	)	
Defendant and	)	
Counterclaim-Plaintiff.	)	
_____	)	

SCHEDULING ORDER NO. 6

In accordance with proceedings at the status conference of March 31, 1999, it is, this \_\_\_\_\_ day of March, 1999, ORDERED:

1. The trial of these cases shall resume before this Court on May 10, 1999 or on the Monday immediately following the Court's submission of United States v. Fields, et al., Cr. No. 98-071 (D.D.C.), to a jury, whichever is earlier.
2. During the ongoing recess, plaintiffs and Microsoft shall seek agreement on a stipulated order that will admit into evidence as much of the remaining documentary exhibits and excerpts of deposition testimony (including plaintiffs' counter-designations) associated with Microsoft's case-

in-chief as may be admitted without objection, bearing in mind that the Court favors admission of evidence which appears authentic and that the Court will determine the weight to be given thereto.

3. Microsoft shall move, on the same day that the parties file the aforementioned stipulation, for the admission of any documentary exhibits and excerpts of deposition testimony whose admission the plaintiffs oppose, and plaintiffs shall respond to Microsoft's motion no more than five (5) days after it is filed, specifying all proposed deposition counter-designations whose admission Microsoft opposes. The admissibility vel non of contested evidence will be resolved at the close of all the evidence.

4. Notwithstanding any prior Order to the contrary, plaintiffs may call as many as three rebuttal witnesses of their choice, and Microsoft may call as many as three surrebuttal witnesses of its choice. Plaintiffs may at their election include Dr. Frederick Warren-Boulton or Professor Franklin Fisher as one of their three rebuttal witnesses, and Microsoft may include Professor Richard Schmalensee as one of its three surrebuttal witnesses, notwithstanding each has previously testified.

5. Plaintiffs and Microsoft shall identify on the record their rebuttal and surrebuttal witnesses by 5:00 p.m. EST on April 23, 1999, and, at the time they identify their rebuttal or surrebuttal witnesses, the parties shall file a two-page, double-spaced summary of the anticipated testimony of each such witness or, in the case of a hostile witness, of the subjects on which the witness is to be examined.

6. Notwithstanding the Final Pretrial Order, entered on October 9, 1998, and Scheduling Order No. 5, entered on February 22, 1999, the parties may serve trial subpoenas seeking the production of documents and things directed at the rebuttal and surrebuttal witnesses (except the economists who have previously testified at trial) and the corporations, if any, by whom the rebuttal witnesses are employed; provided, however, that each trial subpoena authorized by this paragraph shall be limited to issues that both are contained in the summary of anticipated

testimony described in Paragraph 5 above and have not previously been the subject of discovery of that witness or of his employer. Such trial subpoenas shall be narrowly tailored to the subjects on which the rebuttal and surrebuttal witnesses are expected to testify or the subjects which are so related to that testimony as to be proper areas of cross-examination. Each rebuttal and surrebuttal witness, or the corporation that employs him, shall produce the documents responsive to the trial subpoena no more than ten (10) days after service of the subpoena.

7. In the event that a rebuttal or surrebuttal witness is to introduce as part of his testimony, or otherwise testify about the composition, nature, operation, or results of, a computer program (including, but not limited to, programs broadly analogous to Professor Edward Felten's "Prototype Removal Program"), the party designating such a witness shall provide a copy of the program, in both source-code and compiled-binary forms, at the time that it provides the summary of testimony described in Paragraph 5 above.

8. Notwithstanding the Final Pretrial Order and Scheduling Order No. 5, a party may take a six-hour deposition (exclusive of breaks and cross-examination) of each of the other party's rebuttal or surrebuttal witnesses (except the economists who have previously testified at trial); provided, however, that a party shall not be permitted to depose a witness concerning any specific subjects of his anticipated testimony if that witness has already testified at trial about those same specific subjects.

9. All testimony of rebuttal and surrebuttal witnesses, including direct testimony, shall be taken orally in open court.

10. In addition to the supplemental discovery that the Court has authorized herein, plaintiffs may subpoena documents from Microsoft and notice the deposition of no more than two (2) Microsoft executives pursuant to Fed. R. Civ. P. 30(b)(6); provided, however, that the document request and the deposition interrogations shall be limited to Microsoft's business analyses and assessments of, and predictions concerning, the merger of America Online, Inc. with Netscape Communications Corporation and the related agreement with Sun Microsystems, Inc..

11. At the conclusion of the trial, plaintiffs and Microsoft shall file proposed findings of fact no more than thirty (30) days after the date on which the evidence closes. Following oral argument on the proposed findings, to be scheduled at a later date, the Court will issue its Findings of Fact. Plaintiffs and Microsoft shall then file proposed conclusions of law no more than thirty (30) days after the issuance of the Findings of Fact. Following a hearing on the proposed conclusions, likewise to be scheduled at a later date, the Court will issue its Conclusions of Law. The Court gives notice that it expects to request submissions by one or more amici curiae prior to entry of a final judgment herein.

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Thomas Penfield Jackson  
U.S. District Judge