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3:02-CV-02060 LUCENT TECHNOLOGIES V. GATEWAY INC

\*22\*

\*STIPO.\*

FILED

FEB 27 AM 7:55

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RECEIVED  
FEB 26 2003  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

6 Attorneys for  
7 MICROSOFT CORPORATION

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

11 LUCENT TECHNOLOGIES INC. and  
12 LUCENT TECHNOLOGIES GUARDIAN I  
LLC,

13 Plaintiffs and Counter-defendants

14 v.

15 GATEWAY, INC. and GATEWAY  
16 COUNTRY STORES LLC,

17 Defendants and Counter-claimants,

18 and

19 MICROSOFT CORPORATION.

20 Applicant for Intervention

Case No. 02-CV-2060 BTM (JAH)

**STIPULATION AND ~~(PROPOSED)~~  
ORDER FOR MICROSOFT  
CORPORATION TO INTERVENE IN  
THIS ACTION AND FOR AN  
EXTENSION OF TIME TO PRESENT  
CLAIM CONSTRUCTION POSITIONS**

Honorable Barry Ted Moskowitz,

Courtroom 15, 5<sup>th</sup> Floor  
**FILE BY FAX**

22 WHEREAS, Plaintiffs Lucent Technologies Inc. and Lucent Technologies Guardian I LLC  
23 (collectively, "Lucent") filed their Complaint on June 6, 2002 in the United States District Court for  
24 the Eastern District of Virginia;

25 WHEREAS, in that Complaint, Lucent asserted seven patents (the "Lucent Patents");  
26 United States Patent No. B1 4,582,956 (the "Doughty Patent"); United States Patent No. 4,439,759

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28 STIP. & [PROPOSED] ORDER FOR MICROSOFT TO INTERVENE  
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1 (the "Fleming Patent"); United States Patent No. 4,958,226 (the "Haskell Patent"); United States  
2 Patent No. 4,383,272 (the "Netravali Patent"); United States Patent No. 4,617,676 (the "Jayant  
3 Patent"); United States Patent No. 4,317,956 (the "Torok Patent"); and United States Patent No.  
4 4,763,356 (the "Day Patent");

5 WHEREAS, on October 4, 2002, the United States District Court for the Eastern District of  
6 Virginia ordered the instant case transferred to this Court;

7 WHEREAS, on November 19, 2002, this Court held a Case Management Conference where  
8 it set various dates including a claim construction hearing on October 27, 2003;

9 WHEREAS, in an order dated November 22, 2002, this Court vacated these dates;

10 WHEREAS, on December 11, 2002, this Court held a Status Conference where it set a date  
11 of February 28, 2003 for Lucent to file its claim construction positions and a date of April 4, 2003  
12 for Gateway, Inc. and Gateway Country Stores LLC (collectively, "Gateway") to file their claim  
13 construction positions;

14 WHEREAS, Applicant for Intervention Microsoft Corporation ("Microsoft") desires to  
15 intervene in the instant action as a defendant and counterclaimant with respect to five of the seven  
16 Lucent Patents, namely, the Haskell Patent, the Netravali Patent, the Jayant Patent, the Torok  
17 Patent, and the Day Patent (collectively, the "Intervention Patents");

18 WHEREAS, given the proximity of the current claim construction dates, given that  
19 Microsoft has not yet become a party to the instant action, and given the status and nature of this  
20 action, Microsoft desires an extension of time to prepare its claim construction positions;

21 WHEREAS, in signing the instant stipulation, neither Microsoft nor Gateway waive the  
22 right to seek an additional extension of time relating to presenting claim construction positions,  
23 including on the bases that discovery relevant to claim construction has not been provided, or has  
24 been provided at a time too late to permit responsive claim construction positions to be provided by  
25 the time currently scheduled. Lucent reserves the right to oppose such a request, including on the  
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1 bases that the discovery sought is not in fact relevant to claim construction or was not timely  
2 sought.

3 WHEREAS, by intervening only as to the five Intervention Patents, Microsoft does not  
4 waive any right to defend any charge of infringement by Lucent against Microsoft or any Microsoft  
5 product relating to the Doughty Patent and/or Fleming Patent;

6 NOW, THEREFORE, Lucent, Gateway, and Microsoft, by and through their undersigned  
7 counsel, stipulate to the following:

- 8 1. Microsoft shall be permitted to intervene as a defendant and counterclaimant with  
9 respect to the Intervention Patents.
- 10 2. A complete statement of Lucent's proposed construction of all the asserted claims of  
11 each of the seven patents at issue in this case that Lucent contends Gateway and/or  
12 Microsoft infringed (and/or infringe) is no longer due on or before February 28,  
13 2003, but is now due on or before April 11, 2003.
- 14 3. Gateway's response to Lucent's statement of claim construction, which in turn sets  
15 forth a complete statement of Gateway's proposed construction of the asserted  
16 claims of each of the seven patents at issue in this case, is no longer due on or before  
17 April 4, 2003, but is now due on or before May 16, 2003.
- 18 4. Microsoft's response to Lucent's statement of claim construction, which in turn sets  
19 forth a complete statement of Microsoft's proposed construction of the asserted  
20 claims of each of the Intervention Patents at issue in this case, is due on or before  
21 May 16, 2003.

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IT IS SO STIPULATED.

Dated: 2/25/03

FISH & RICHARDSON P.C.

By:   
Christopher S. Marchese

Attorneys for  
MICROSOFT CORPORATION

Dated: \_\_\_\_\_

HAHN & ADEMA

By: \_\_\_\_\_  
Alison Adema

Attorneys for  
LUCENT TECHNOLOGIES INC. and  
LUCENT TECHNOLOGIES GUARDIAN I  
LLC

Dated: \_\_\_\_\_

SELTZER, CAPLAN, MCMAHON & VITEK

By: \_\_\_\_\_  
David J. Zubkoff

Attorneys for  
GATEWAY, INC. and GATEWAY  
COUNTRY STORES LLC

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**IT IS SO STIPULATED.**

Dated: \_\_\_\_\_

FISH & RICHARDSON P.C.

By: \_\_\_\_\_  
Christopher S. Marchese

Attorneys for  
MICROSOFT CORPORATION

Dated: 2/26/03

HAHN & ADEMA

By: *Alison Adema*  
Alison Adema

Attorneys for  
LUCENT TECHNOLOGIES INC. and  
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Attorneys for  
GATEWAY, INC. and GATEWAY  
COUNTRY STORES LLC

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IT IS SO STIPULATED.

Dated: \_\_\_\_\_

FISH & RICHARDSON P.C.

By: \_\_\_\_\_  
Christopher S. Marchese

Attorneys for  
MICROSOFT CORPORATION

Dated: \_\_\_\_\_

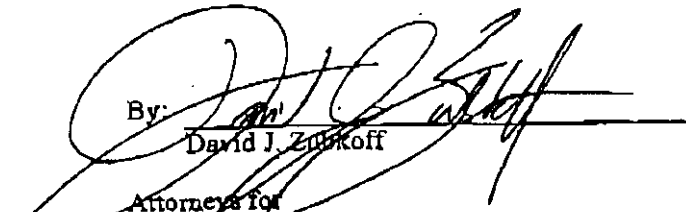
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By: \_\_\_\_\_  
Alison Aderna

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LUCENT TECHNOLOGIES INC. and  
LUCENT TECHNOLOGIES GUARDIAN I  
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Dated: February 26, 2003

SELTZER, CAPLAN, MCMAHON & VITEK

By:   
David J. Ziskoff  
Attorneys for  
GATEWAY, INC. and GATEWAY  
COUNTRY STORES LLC

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ORDER

1. Microsoft can intervene as a defendant and counterclaimant with respect to the Intervention Patents.
2. Microsoft shall file an answer (including any counterclaims) within <sup>20</sup> days of entry of this order.
3. A complete statement of Lucent's proposed construction of all the asserted claims of each of the seven patents at issue in this case that Lucent contends Gateway and/or Microsoft infringed (and/or infringe) is no longer due on or before February 28, 2003, but is now due on or before April 11, 2003.
4. Gateway's response to Lucent's statement of claim construction, which in turn sets forth a complete statement of Gateway's proposed construction of the asserted claims of each of the seven patents at issue in this case, is no longer due on or before April 4, 2003, but is now due on or before May 16, 2003.
5. Microsoft's response to Lucent's statement of claim construction, which in turn sets forth a complete statement of Microsoft's proposed construction of the asserted claims of each of the Intervention Patents at issue in this case, is due on or before May 16, 2003.

*MS*

*Microsoft shall file its counterclaim in intervention within 20 days.*

Dated: 2-26, 2003

*Barry T. Moskowitz*  
BARRY T. MOSKOWITZ  
Judge of the District Court

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