

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (CKK)

Next Court Deadline: June 3, 2005  
Status Report

**MEMORANDUM IN SUPPORT OF MOTION FOR  
RE-APPOINTMENT OF DR. HARRY J. SAAL, FRANKLIN FITE, JR., AND  
EDWARD P. STRITTER AS MEMBERS OF THE TECHNICAL COMMITTEE**

Plaintiff, the United States of America, and the Plaintiffs in *New York, et. al. v. Microsoft*, CA No. 98-1233 (CKK), the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina, and Wisconsin (“the New York Group”) (collectively “Plaintiffs”), file this Memorandum in support of their Motion for Re-Appointment of Dr. Harry J. Saal, Franklin Fite, Jr., and Edward P. Stritter as Members of the Technical Committee. The Final Judgment in the above-captioned case requires that application be made to this Court for the appointment of the persons selected to be Technical Committee Members. Pursuant to Section IV.B.3, the Plaintiffs applied to the Court for appointment of the Plaintiffs’ designee, Dr. Harry J. Saal and Microsoft’s designee, Franklin Fite, Jr. on November 21, 2002 and the Standing Committee Members’ designee, Edward P. Stritter on January 27, 2003. The three Technical Committee Members were appointed by this Court on February 14, 2003.

Since their appointment, the three Members of the Technical Committee have fully performed their duties under the Final Judgment. Plaintiffs and Microsoft (collectively “the

Parties”) are satisfied with their accomplishments and are pleased that the Members have agreed to accept re-appointment to a second term. The Parties and the Technical Committee Members have fulfilled the process for re-appointment under the Final Judgment. Neither Plaintiff, the New York Group, nor Microsoft objects under Section IV.B.2 to the re-appointment of the Plaintiffs’ designee Dr. Harry J. Saal, Microsoft’s designee Franklin Fite, Jr., and the Standing Committee Members’ designee Edward P. Stritter to second terms as Members of the Technical Committee.

The Plaintiffs seek to draw the Court's attention to two other matters. First, as the Court is aware, the Final Judgment was entered November 12, 2002, and runs for 60 months, or until November 12, 2007. The Final Judgment further provides, in Section IV.B.4, that Technical Committee members may (if re-appointed) serve two 30-month terms, in effect covering the full period of the Final Judgment. Although the Court appointed all three Technical Committee Members on February 14, 2003, Dr. Saal and Mr. Fite committed themselves months earlier to serve on the Technical Committee, subject to the Court’s approval. Thus, well before the Court’s approval Order itself, the two had begun the process not only of choosing the third Technical Committee member, but also of organizing the Technical Committee’s operations from scratch. In consequence, Plaintiffs and Microsoft agreed that Dr. Saal and Mr. Fite’s initial 30-month terms appropriately included the November 2002 to February 2003 period. Their term therefore will expire on May 12, 2005, while Mr. Stritter’s 30 month term, strictly speaking, extends to July 28, 2005 – 30 months after the filing of Plaintiffs’ motion for the appointment of Mr. Stritter on January 27, 2003 .

At this point, however, no purpose would be served by maintaining two different term schedules for the three Technical Committee Members. Accordingly, we propose that the Court re-appoint all three Members to a second term commencing May 12, 2005; to the limited extent necessary, the Final Judgment should be interpreted accordingly. Plaintiffs and the Technical Committee Members have executed an amendment to the Technical Committee Service Agreement to reflect this basic approach.

Second, as the 2007 expiration of the Final Judgment and the conclusion of the Technical Committee Members' second term approaches, Plaintiffs contemplate that the Technical Committee Members will need to develop a plan to wind up the Technical Committee's affairs. We have, therefore, agreed with the Technical Committee Members to develop such a plan during the 90-day period immediately prior to the Final Judgment's expiration. This requirement similarly is part of the amendment to the Technical Committee Service Agreement. Plaintiffs will inform the Court on the status of this plan as it is developed, particularly if it seems possible that winding up the affairs of the Technical Committee cannot feasibly be accomplished precisely simultaneous with the November 12, 2007 expiration date of the Final Judgment.

Having fulfilled the requirements of the Final Judgment for the re-appointment of the Members of the Technical Committee, the Plaintiffs respectfully request that, pursuant to IV.B.4, the Court re-appoint Dr. Harry J. Saal, Franklin Fite, Jr., and Edward P. Stritter to second terms as Members of the Technical Committee.

Dated: May 4, 2005

Respectfully submitted,

FOR THE STATES OF NEW YORK,  
OHIO, ILLINOIS, KENTUCKY,  
LOUISIANA, MARYLAND, MICHIGAN,  
NORTH CAROLINA, AND WISCONSIN

FOR THE UNITED STATES  
DEPARTMENT OF JUSTICE'S  
ANTITRUST DIVISION

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