

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

GARY ODOM	)	Civil Action No. 6:08-CV-331
Plaintiff,	)	
v.	)	<b>DECLARATION OF JOHN D. VANDENBERG, ESQ.</b>
MICROSOFT CORPORATION,	)	Hon. Leonard Davis
Defendant.	)	
	)	
	)	
	)	
	)	

---

I, John D. Vandenberg, Esq., under penalty of perjury, declare as follows:

1. I am an attorney with the law firm of Klarquist Sparkman, LLP (hereinafter “Klarquist”). Unless otherwise stated herein, I have personal knowledge of the facts set forth below and, if called as a witness, could and would competently testify thereto.
2. Microsoft Corporation (“Microsoft”) was a client of Klarquist in 1999, and Microsoft continues to be a client of Klarquist. On litigation matters, I am one of the primary contacts for Microsoft at Klarquist.
3. The services Gary Odom provided to Klarquist on behalf of Microsoft under the agreements attached hereto as Exhibits 1, 2, and 3 were performed in Oregon.
4. As a technical consultant employed by Klarquist, Gary Odom provided consulting services on behalf of Microsoft in a patent dispute between Microsoft and Martin Reiffin in which certain versions of Microsoft’s Office software were accused of infringing Reiffin’s patents.
5. Gary Odom never informed me, and as far as I know he did not inform anyone else at Klarquist, that he had filed or was prosecuting the patent applications that issued as U.S. Patent Nos. 7,036,087 and 7,363,592. Had I learned of such a statement by Gary Odom, I

believe that I would have remembered it as that would have been an issue of significant concern to me.

6. Gary Odom never sought nor received my approval, and as far as I know never sought nor received any one else at Klarquist's approval, to bring this patent infringement action against Klarquist's client, Microsoft. If Gary Odom had sought anyone at Klarquist's approval, then I am confident that I would have been informed of his request.

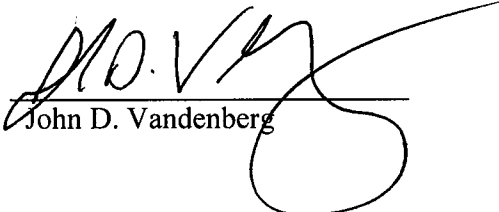
7. Attached hereto as Exhibit 1 is a true and correct copy of a Confidentiality and Non-Disclosure Agreement between Gary Odom and Klarquist dated August 31, 1999.

8. Attached hereto as Exhibit 2 is a true and correct copy of a Consulting Agreement between Gary Odom and Klarquist dated August 21, 2001 regarding a patent dispute between Microsoft and Martin Reiffin.

9. Attached hereto as Exhibit 3 is a true and correct copy of a Consulting Agreement between Gary Odom and Klarquist dated January 24, 2003 regarding a patent dispute between Microsoft and Imagexpo, L.L.C.

10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22<sup>nd</sup> day of October 2008, at Portland, Oregon.

By:   
John D. Vandenberg

# Exhibit 1

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT is effective as of this 31<sup>st</sup> day of August, 1999, between Klarquist, Sparkman, Campbell, Leigh & Whinston, LLP, of 121 SW Salmon Street, Suite 1600, Portland, Oregon 97204, (hereinafter "Klarquist"), and Gary Odom, Tigard, Oregon (hereinafter "Recipient").

**1. Purpose**

Klarquist wishes to give Recipient access to certain confidential information ("Confidential Information") for use in the course of Recipient's authorized work for Klarquist. In consideration of Recipient receiving Confidential Information, Recipient agrees as evidenced by Recipient's signature below to use such Confidential Information only for the above purpose pursuant to the following terms and conditions, unless otherwise hereafter agreed to in writing by Klarquist.

**2. Non-Disclosure**

The Recipient shall receive and hold Confidential Information in strict confidence and trust and shall not communicate Confidential Information to any third party and shall prevent disclosure of Confidential Information to any third party.

**3. Return and Treatment of Confidential Information**

Recipient agrees not to remove any Confidential Information from Klarquist's offices (or the place of access if outside Klarquist's offices) without express written approval by Klarquist. Copies of Confidential Information will only be made when specifically required in furtherance of the purpose stated above. Upon the request of Klarquist, Recipient will promptly return any tangible materials containing the Confidential Information, together with any copies thereof. The return of any tangible material containing the Confidential Information shall not affect Recipient's obligation to treat Confidential Information as confidential per this agreement. If Recipient prepares or produces any charts, tables, memoranda, briefs, or other materials based or derived in whole, in part, on or from Confidential Information, Recipient agrees not to show or display to any third party, nor in any manner publicly use, give, distribute, transfer or sell to any third party any of the aforesaid items without first obtaining the express written permission of Klarquist.

**4. Conflict of Interest Avoidance**

Recipient agrees not to assert, without the express written approval of Klarquist, any patent or other intellectual property interest against any client of Klarquist, for example, by making allegations of infringement, attempting to license, bringing or threatening suit, or otherwise. Recipient agrees to notify Klarquist in writing immediately upon learning of a potential conflict between Recipient and any client of Klarquist. Recipient agrees, if requested, to cooperate with Klarquist and to provide sufficient information to allow Klarquist to evaluate the nature and extent of any potential conflict between Recipient and any client of Klarquist.

**5. Severability**

If any provision of this agreement is held invalid or unenforceable by a court of law, all other provisions shall nevertheless continue in full force and effect.

**6. Governing Law and Jurisdiction**

This agreement shall be construed under the laws of the State of Oregon. The federal and state courts within the State of Oregon shall have exclusive jurisdiction to adjudicate any dispute arising out of this agreement. Klarquist and Recipient consent to jurisdiction and venue of such courts of the State of Oregon, agree to accept service of process by mail, and waive any jurisdictional defenses otherwise available.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date and year first written above.

KLARQUIST, SPARKMAN, CAMPBELL,  
LEIGH & WHINSTON, LLP:

By: \_\_\_\_\_

Partner

RECIPIENT:

By: \_\_\_\_\_

Gary Odom  
15505 S.W. Bulrush Lane  
Tigard, Oregon 97223

Date: August 31, 1999

Date: August 31, 1999

# Exhibit 2

Lisa M. Caldwell  
James E. Garinger  
Joseph T. Jalnbeek  
Ramon A. Kitzke II  
William D. Noonan, M.D.  
David F. Petersen  
Richard F. Polley  
Robert F. Scotti  
Stacey C. Slater  
Donald L. Stephens, Jr.  
John W. Sussart  
John D. Vandenberg  
Arthur L. Whinston  
Stephen A. Wight  
Garth A. Winn

Senior Counsel  
Kenneth S. Klarquist  
James S. Leigh

Of Counsel  
Jeffrey S. Love

# KLARQUIST SPARKMAN, LLP

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*Including Patents, Trademarks, Copyrights & Litigation*  
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One World Trade Center  
121 S.W. Salmon Street, 16<sup>th</sup> Floor  
Portland, Oregon 97204-2988 U.S.A.  
Fax: 503-228-9446  
Telephone: 503-226-7391  
[www.klarquist.com](http://www.klarquist.com)

Janis E. Adler  
Sevon Alexander  
\*Daniel B. Burg  
J. Christopher Caraway  
Kristin L. Cleveland  
Joel C. Corcoran  
Michael P. Girard  
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Tanya M. Harding, Ph.D.  
\*Stephen J. Jancus  
Michael D. Jones, Ph.D.  
Gregory L. Masner  
Kyle B. Rinehart  
\*Wayne W. Rupert

Registered Patent Agents  
Gillian Busker, Ph.D.  
David E. Orr, Ph.D.  
Shirley Lynn Rybak, Ph.D.  
Susan Alpert Siegel, Ph.D.

Technical Consultants  
Daniel H. Bell  
Kevin M. Hayes  
Adon A. Robins, Ph.D.

*\*Not a Member of the Oregon Bar*

August 21, 2001

By e-mail to [patent.hawk@verizon.net](mailto:patent.hawk@verizon.net)

Gary Odom  
Patent Hawk (LLC)  
15505 SW Buhrush Lane  
Tigard, OR 97223

Re: Consulting Agreement

Dear Gary:

It is a pleasure to extend this offer to retain you as a consultant to Klarquist Sparkman, LLP. This offer letter pertains, in particular, to technology that may be relevant to the patent dispute between Microsoft and Martin Reiffin.

We wish to retain your services under the following terms:

In consideration of the consultation you have agreed to provide, Klarquist Sparkman, LLP has agreed to compensate you for your time actually expended in connection with this matter at your normal consulting rate of \$115/hour (or a daily rate to be agreed, if applicable). We will also reimburse your reasonable, pre-authorized travel and other necessary expenses incurred in the course of your consulting work.

For each project, we will need to establish a budget and identify the "deliverables" in advance. On the Reiffin matter, the initial budget is 40 hours for the first month, with up to \$500 for expenses. After that, the budget is no more than \$900 per week on average over the billing cycle -- roughly seven hours, allowing for modest expenses. (While this per-week number is an average, it is also a guideline intended to make sure that there is time available in the later portion of each billing cycle). It is essential that you let us know in advance before exceeding the budget in any given project. Initial deliverables include your continued analysis of our proposed claim construction definitions.

Gary Odom  
August 21, 2001  
Page 2

For billing purposes, please submit itemized invoices on a monthly basis, preferably by the 25<sup>th</sup> of each month. Please address the invoices to my attention. We would appreciate your using billing increments as small as a quarter-hour where appropriate. We will process these invoices in our ordinary manner.

Your consultation must remain confidential. This confidentiality has at least four aspects. First, your communications with us will be confidential in that, in most instances, they will be protected from disclosure by the attorney-client privilege and work product immunity. In order to preserve this confidentiality, you agree that anything we communicate to you, you communicate to us, or that you learn from anyone else during the course of your consultation is to remain strictly confidential. You also agree to keep confidential any documents provided to you during the course of the consultation, and to return any such documents to us at the conclusion of your consultation.

Second, you will be bound by the terms of any Protective Order that is entered in any litigation on this dispute.

Third, you agree not to work with or for Reiffin, or any other entity for which your work would be in direct conflict with your work with us on this case, e.g., in connection with any other lawsuit or potential lawsuit adverse to Microsoft. This restriction is necessary to ensure that any confidential information is not unintentionally disclosed.

Fourth, you agree to let us know before you file or prosecute any patent applications relating to subject matter you consult with us on (or for any reason publish in such areas).

If the terms outlined in this letter are acceptable, please countersign this letter in the space below and return the original to me, keeping the enclosed copy for your files.

Sincerely,

KLARQUIST SPARKMAN, LLP



John D. Vandenberg

I agree to the terms and conditions set forth above.

---

Gary Odom

Date: August 21, 2001



# Exhibit 3



# KLARQUIST SPARKMAN, LLP

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January 22, 2003

**Partners**

- Lisa M. Caldwell
- J. Christopher Carraway
- James E. Geringer
- Michael P. Girard
- Joseph T. Jakubek
- Michael D. Jones, Ph.D.
- Ramon A. Klitzke II
- William D. Noonan, M.D.
- David P. Petersen
- Richard J. Polley
- Robert F. Scotti
- Stacey C. Slater
- Donald L. Stephens, Jr.
- John D. Vandenberg
- Stephen A. Wight
- Garth A. Winn

**Senior Counsel**

- Kenneth S. Klarquist
- James S. Leigh
- John W. Stuart
- Arthur L. Whinston

**Of Counsel**

- Jeffrey S. Love
- Michael N. Zachary\*

**Associates**

- Steven Alexander
- Patrick M. Bible
- Michael L. Buckler
- Kristin L. Cleveland
- Scott E. Davis
- Debra A. Gordon, Ph.D.
- Jeffrey B. Haendler
- Tanya M. Harding, Ph.D.
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- Heath E. Kula
- Gregory L. Maurer
- Richard D. McLeod
- Sunjay Y. Mohan\*
- Aden A. Rehms, Ph.D.
- Kyle B. Rinehart
- Wayne W. Rupert
- Devon J. Zastrow

**Registered Patent Agents\***

- Kenneth M. Benderly
- Gillian L. Bunker, Ph.D.
- Anne Carlson, Ph.D.
- David E. Orr, Ph.D.
- Sheree Lynn Rybak, Ph.D.
- Susan Alpert Siegel, Ph.D.

**Technical Consultants\***

- Daniel H. Bell
- Travis Young, Ph.D.

\*Not a Member of the Oregon Bar

Via e-mail and First-Class Mail to: ~~patenthawk@wirefire.us~~ <sup>water</sup>

Gary Odom  
Patent Hawk LLC  
15505 S.W. Bulrush Lane  
Tigard, OR 97223

Re: Imagexpo v. Microsoft Consulting Agreement

Dear Gary:

It is a pleasure to confirm our offer to retain you as a consultant to Klarquist Sparkman, LLP with respect to the patent dispute between Microsoft and Imagexpo, L.L.C. (hereinafter "the Imagexpo matter").

We wish to retain your services under the following terms:

In consideration of the consultation you have agreed to provide, Klarquist Sparkman, LLP has agreed to compensate you for your time actually expended in connection with this matter at your normal consulting rate of \$115/hour (or a daily rate to be agreed, if applicable). We will also reimburse your reasonable, pre-authorized travel and other necessary expenses incurred in the course of your consulting work.

For each project, we will need to establish a budget and identify the "deliverables" in advance. On the Imagexpo matter, the "deliverables" consist of a report identifying prior art patents or printed publications that might successfully be asserted in challenging the validity of Imagexpo's patent. The initial budget is 100 hours. After that, it is essential that you let us know in advance and get our authorization before exceeding the budget. We have in mind additional projects, such as working with us to locate software that might constitute prior art, and/or analyzing Microsoft patents to determine whether Imagexpo is infringing them. However, we will discuss these projects in more detail and agree on the deliverables and the time budget before commencing them.

For billing purposes, please submit itemized invoices on a monthly basis, preferably by the 25<sup>th</sup> of each month. Please address the invoices to my attention. We would appreciate your using billing increments as small as a quarter-hour where appropriate. We will process these invoices in our ordinary manner.





Gary Odom  
January 22, 2003  
Page 2

Your consultation must remain confidential. This confidentiality has at least four aspects. First, your communications with us will be confidential in that, in most instances, they will be protected from disclosure by the attorney-client privilege and work product immunity. In order to preserve this confidentiality, you agree that anything we communicate to you, you communicate to us, or that you learn from anyone else during the course of your consultation is to remain strictly confidential. You also agree to keep confidential any documents provided to you during the course of the consultation, and to return any such documents to us at the conclusion of your consultation.

Second, you will be bound by the terms of any Protective Order that is entered in any litigation on this dispute. A copy of the protective Order is attached.

Third, you agree not to work with or for Imagexpo or any other entity for which your work would be in direct conflict with your work with us on this case, e.g., in connection with any other lawsuit or potential lawsuit adverse to Microsoft. This restriction is necessary to ensure that any confidential information is not unintentionally disclosed.

Fourth, you agree to let us know before you file or prosecute any patent applications, or author any publicly available publications, relating to subject matter on which you consult with us.

If the terms outlined in this letter are acceptable, please countersign this letter in the space below and return the original to me, keeping the enclosed copy for your files.

Sincerely yours,

KLARQUIST SPARKMAN, LLP

Michael N. Zachary

MNZ:mgp  
Enclosure(s)

I agree to the terms and conditions set forth above.

\_\_\_\_\_  
Gary Odom

Date: January 24, 2003