

TTAB

Post Office Box 40685
Raleigh, North Carolina 27629-0685
June 22, 2004

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202

Re: Brenda D. Lewis, M.A.S., JD and William L. Flowers, Jr. (husband and wife)
v. Microsoft Corporation
Mark: Windows
Registration Number: 1-872-264



06-28-2004

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #74

Dear Sir/Madam:

Enclosed is our Petition for Cancellation of Registration Number 1-872-264 (in triplicate).

We've also enclosed a check for the required filing fee in the amount of \$300.00.

Respectfully submitted,


Brenda D. Lewis, M.A.S., JD


William L. Flowers, Jr.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. 1-872-264

For the mark WINDOWS

Registered June 21, 1994

Brenda D. Lewis, M.A.S., JD :
William L. Flowers, Jr. :
(husband and wife), :
Petitioner, :

v. :

Cancellation No. _____

Microsoft Corporation, :
Respondent. :

**PETITION FOR CANCELLATION OF REGISTRATION
No. 1-872-264**

Petitioner, Brenda D. Lewis, M.A.S., JD and William L. Flowers, Jr., as husband and wife ("Petitioner") having a place of business at 124 Fairview Road, Louisburg, NC 27549 whose mailing address is Post Office Box 40685, Raleigh, N. C. 27629-0685 believes that it is and will continue to be damaged by Registration Number 1-872-264 issued on the Principal Register on June 21, 1994 to Respondent, Microsoft Corporation, ("Respondent") for the trademark WINDOWS for microcomputer programs and manuals

sold as a unit, and pursuant to 15 U.S.C. §1064 et seq. and 37 C.F.R. 2.111 et seq., --- hereby petitions to cancel the same.

As grounds for this Petition to Cancel Registration Number 1-872-264, it is alleged that:

1. Petitioner is presently and has been since 1984 engaged in the business of developing, distributing and selling computer software to the public nationally and internationally.
2. WindowPad, one of Petitioner's software products, has been sold across state lines in the mainstream of interstate commerce and internationally to end-use consumers in the computer software industry since 1984.
3. WindowPad is an integrated windowing and note processing utility software program. A true copy of the Copyright Registration is appended hereto, identified as "Exhibit A" and incorporated herein by reference.
4. "WindowPad" has been recognized within the computer industry since 1984 as the trademark used by Petitioner to distinguish its software program from other programs possessing similar functions within the software industry, and to market the software to prospective purchasers in the computer industry. See "Exhibits B and C," incorporated herein by reference.
5. On information and belief, the name and address of the current owner of U.S. Trademark Registration Number 1-872-264 is Microsoft Corporation, One Microsoft Way, Redmond, WA 98052-6399.

6. Upon information and belief, Respondent did not file an acceptable Intent to Use Statement with the Patent and Trademark Office expressing a bona fide intention to use a derivative of Petitioner's mark WindowPad (i.e., Windows) in commerce prior to its first use on a functional product sold to an end-use consumer in the mainstream of commerce which thereafter matured into a federal registration.
7. Petitioner's history of prior use of the word WindowPad as a trademark to distinguish its software products commenced at least SIX YEARS before the August 20, 1990 date of filing of Respondent's Registration Number 1-872-264. Petitioner has been since 1984 and is presently engaged in the business of developing, distributing and selling computer software to the public across state lines nationally and country boundary lines internationally.
8. Windows, a name Respondent uses for its software product, is a derivative of WindowPad, the name of Petitioner's software product.
9. Petitioner has common law trademark rights in the name of WindowPad, and any derivative thereof under Section 2(d) of the Lanham Act.
10. Petitioner has not abandoned its common-law trademark rights to WindowPad, and any derivative thereof.
11. Petitioner is the senior user of the name WindowPad, and any derivative thereof, and Respondent is the junior user of Windows, a derivative of WindowPad.

12. Petitioner established prior rights to the word WindowPad, and any derivative thereof, in 1984 when it began publishing, advertising, selling and distributing WindowPad, a completed functional computer software product to end-use consumers across state lines via interstate commerce.
13. WindowPad is a name of a computer software product that can be registered as a trademark in the Patent and Trademark Office.
14. Respondent did not begin using the word Windows, a derivative of WindowPad, for a completed functional computer software product sold to end-use consumers across state lines via interstate commerce until 1985—more than one year after Petitioner. A true copy of *Microsoft Corporation v. Lindows.com, Inc.*, Case No. C01-2115C, (Order, February 10, 2004) (“*Microsoft Windows 1.0 entered the marketplace in November 1985*”) is appended hereto, identified as “Exhibit E” and incorporated herein by reference.
15. Despite Petitioner’s established prior use of WindowPad, Respondent filed on August 20, 1990 in the United States Patent and Trademark Office an application for trademark registration of the mark Windows, which matured into Registration Number 1-872-264 on the Principal Register for “computer programs and manuals sold as a unit; namely graphical operating environment programs for microcomputers.” A true copy of Respondent’s Trademark Registration Number 1-872-264 is appended hereto, identified as “Exhibit D” and incorporated herein by reference.

16. Consequently, at all relevant times, Respondent has been a distributor of Petitioner's goods bearing a derivative of Petitioner's WindowPad mark.
17. Petitioner did not consent to Respondent's use of a derivative of Petitioner's mark; nor did Petitioner consent to Respondent's trademark registration of a derivative of Petitioner's WindowPad mark.
18. Respondent did not own the Windows mark that is a derivative of Petitioner's WindowPad mark as Respondent alleged in its application to the Patent and Trademark Office for U. S. Trademark Registration which subsequently matured into U. S. Registration Number 1-872-264.
19. Respondent did not use the derivative of WindowPad (i.e., Windows) on a completed functional computer software product sold to end-use consumers across state lines via interstate commerce until 1985; yet, Respondent stated on its application to the Patent and Trademark Office for Registration Number 1-872-264 that it first used the derivative of WindowPad in commerce on October 18, 1983. Therefore, on information and belief, when Respondent submitted its sworn Statement of Use in commerce to the Patent and Trademark Office indicating that it first used the derivative of WindowPad (i.e., Windows) on a completed functional computer software product sold to end-use consumers across state lines via interstate commerce was knowingly false.
20. Upon information and belief, Respondent knowingly and fraudulently alleged its ownership of the Windows mark, a derivative of Petitioner's WindowPad mark, in Respondent's application filed on August 20, 1990

with intent to deceive the United States Patent and Trademark Office in order to obtain registration for a derivative of Petitioner's WindowPad mark.

21. Upon information and belief, Respondent knowingly and fraudulently reaffirmed Respondent's use in commerce of the Windows mark (a derivative of Petitioner's WindowPad mark) in the Amendment to Alleged Use filed on January 1, 2000 in connection with the application that matured into U. S. Registration Number 1-872-264 with intent to deceive the United States Patent and Trademark Office in order to obtain registration for a derivative of Petitioner's WindowPad mark.
22. Upon information and belief, there was no bona fide use of Respondent's mark Windows, which is a derivative of Petitioner's WindowPad mark, in commerce prior to the filing of the use-based application on August 20, 1990 for its fraudulently obtained registration.
23. Upon information and belief, Respondent did not have a bona fide intent to use the mark in connection with the identified goods, namely graphical operating environment programs for microcomputers as of the filing date, August 20, 1990, of its application.
24. Upon information and belief, U. S. Trademark Registration Number 1-874-264 was obtained by fraud by virtue of Respondent's knowingly fraudulent allegation of ownership of Windows, a derivative of Petitioner's WindowPad mark in an application with intent to deceive the

United States Patent Office that subsequently matured into U. S. Trademark Registration Number 1-872-264.

25. Upon information and belief, U. S. Trademark Registration Number 1-872-264 was obtained by fraud by virtue of Respondent's knowingly fraudulent allegation of use of Windows, a derivative of Petitioner's WindowPad mark, in the Amendment to Allege Use filed in connection with its application with intent to deceive the United States Patent and Trademark Office that subsequently matured into U. S. Trademark Registration Number 1-872-264.
26. Petitioner believes that it is damaged and is likely to be damaged by the continued registration of U. S. Trademark Registration Number 1-872-264 because (1) Petitioner is the senior user to WindowPad and any derivatives thereof, including Windows; (2) Petitioner possesses prior (senior) rights to WindowPad and any derivatives thereof, including Respondent's Windows; (3) Petitioner has not abandoned its WindowPad trademark; (4) WindowPad was first used constructively in interstate commerce by Petitioner in 1984 (more than a year before Respondent confiscated a derivative of the WindowPad mark) to identify its software product within the computer industry.

Due to the foregoing, if Respondent's U. S. Trademark Registration Number 1-872-264 is permitted to remain on the Principal Register, with all of the presumptions conferred upon it by being on the Principal Register, Petitioner will continue to be subjected to great and irreparable damage while Respondent who fraudulently obtained

its Principal Registration status will enjoy unlawful gain and advantage that it is not entitled to have under the statutes as written under the Trademark Act of 1946.

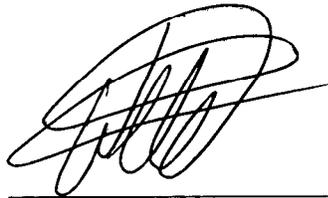
WHEREFORE, Petitioner humbly requests that this Petition be granted and that U. S. Trademark Registration Number 1-872-264 be cancelled.

DATED the 25th day of June 2004.

Respectfully submitted,



Brenda D. Lewis, M.A.S., JD



William L. Flowers, Jr.

Certificate of Mailing by "Express Mail"

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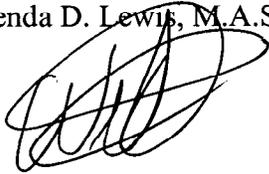
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I hereby certify that this correspondence is being deposited with the United States Postal Service utilizing "Express Mail Post Office to Addressee" service under 37 C.F.R.

1.10 on the date indicated above in an envelope addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202.

A handwritten signature in cursive script, appearing to read "Brenda D. Lewis", written above a horizontal line.

Brenda D. Lewis, M.A.S., JD

A handwritten signature in cursive script, appearing to read "William L. Flowers, Jr.", written above a horizontal line.

William L. Flowers, Jr.

EXHIBIT A

CERTIFICATE OF COPYRIGHT REGISTRATION

FORM TX EXHIBIT A
UNITED STATES COPYRIGHT OFFICE



OFFICIAL SEAL

This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

David Reed

REGISTER OF COPYRIGHTS
United States of America

REGISTRATION NUMBER

TX 1-453-605

EFFECTIVE DATE OF REGISTRATION
NOV 13 84
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

1 WINDOWPAD A INTEGRATED Windowing AND NOTE PROCESSING UTILIT

PREVIOUS OR ALTERNATIVE TITLES ▼

WINDOWPAD

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 NAME OF AUTHOR ▼

William Leon Flowers Jr

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

8 MAY 47

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of USA
Domiciled in USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

PROGRAM AND TEXT

NAME OF AUTHOR ▼

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Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of _____
Domiciled in _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of _____
Domiciled in _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
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Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.

1984 Year

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published. Month AUG Day 1 Year 1984 Nation USA

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

William Leon Flowers Jr.
2494 SUN VALLEY CIRCLE
SILVER SPRING MD 20906

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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APPLICATION RECEIVED NOV. 13, 1984 8/21/84
ONE DEPOSIT RECEIVED NOV. 13, 1984 8/21/84
TWO DEPOSITS RECEIVED
REMITTANCE NUMBER AND DATE
298870 8/21/84

MORE ON BACK ► • Complete all applicable spaces (numbers 5-11) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 10.

DO NOT WRITE HERE
Page 1 of 2 pages

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Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

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CORRESPONDENCE Yes

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PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

This is the first published edition of a work previously registered in unpublished form.

This is the first application submitted by this author as copyright claimant.

This is a changed version of the work, as shown by space 6 on this application.

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Year of Registration ▼

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DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

See instructions before completing this space.

6

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Names of Manufacturers ▼

Places of Manufacture ▼

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DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. Name ▼ Account Number ▼

9

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

WILLIAM LEON FLOWERS JR
2494 SUN VALLEY CIRCLE
SILVER SPRING MD. 20906

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Area Code & Telephone Number ▶

Be sure to give your daytime phone number

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check one ▶

- author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

WILLIAM LEON FLOWERS JR
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

Typed or printed name and date ▼ If this is a published work, this date must be the same as or later than the date of publication given in space 3.

William Leon Flowers Jr

date ▶ 20 Aug 1984

Handwritten signature (X) ▼

William L Flowers Jr

MAIL CERTIFICATE TO

Certificate will be mailed in window envelope

Name ▼	William LEON FLOWERS JR.
Number/Street/Apartment Number ▼	2494 SUN VALLEY CIRCLE
City/State/ZIP ▼	SILVER SPRING MD 20906

Have you:

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- Signed your application in space 10?
- Enclosed check or money order for \$10 payable to Register of Copyrights?
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* 17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

EXHIBIT B

EN FLEUR CORPORATION

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INVOICE

INVOICE NO.	DATE	SALESPERSON
0003	09/07/84	01

TO: ARTHUR ORR SHIP TO:
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ORDER NO.	DATE SHIPPED	SHIPPED VIA
0003	09/07/84	U.S. POST

[QUANTITY]	[-----DESCRIPTION-----]	[UNIT PRICE]	[AMOUNT]
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1	WINDOWPAD UTILITY SOFTWARE	20.00	20.00
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CHECK NUMBER: 1109	SUBTOTAL	20.00
BANK:	DEPOSIT	0.00
	DISCOUNT	0.00
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TOTAL -----> \$21.25

T H A N K Y O U

EXHIBIT C

head positioning. The unit requires no preventive maintenance.

Specially formatted disks are available from IJK or their dealers. The upgrade system is \$1,195 for one drive. An additional drive is \$395 from IJK Inc., 24646 S.E. 192, Maple Valley, WA 98038, 206-432-9414. Reader Service ✓ 533

Dust Off Your Computer

Dirt and dust build up in the unreachable areas of a computer system: between the keys, inside the printer, and inside disks and disk drives.

The Dust-Off System II kit from Falcon Safety Products Inc. (1605 Bristol Road, Mountainside, NJ



Keep dirt and dust out of your computer, peripherals, and media with the Dust-Off System II kit.

07092, 201-233-5000) blows away dirt in computers, media, and peripherals with a dry propellant.

Also included are a Mini-Vac that picks up dust and lint particles and a 2-foot extender hose for cleaning inside equipment.

The optional Star-Off II attachment (\$17.95) produces an ionized blast to

neutralize static electricity buildup.

The System II package is \$42.90. Kit components are also available separately. Reader Service ✓ 562

Model III Windowing

The Windowpad integrated windowing and note-processing utility for 16K, 32K, and 48K Model III's works within applications programs to write, recall, and edit memos and notes without loss of data in your primary program.

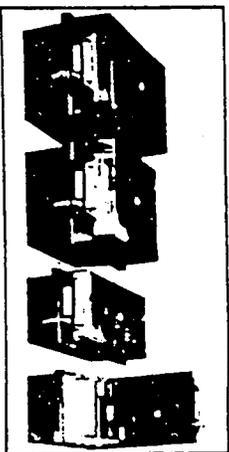
Windowpad loads into top-of-memory for protection from Basic programs and runs with applications programs or as a standalone program.

The program saves operations performed on the ap-

plication program while you're using Windowpad. After Windowpad completes execution, it restores the application program functions.

A complimentary personnel filing program, SASSIE, is also available. It has expandable, movable windows, and can perform multiple tasks simultaneously.

Windowpad is \$20 plus \$1.25 shipping and handling. Contact En Pleur Corp. (2494 Sun Valley Circle, Silver Spring, MD 20906, 301-598-4332) for more information. Reader Service ✓ 554



Multi-Form disk trays keep your disks under lock and key.

plication program while you're using Windowpad. After Windowpad completes execution, it restores the application program functions.

A complimentary personnel filing program, SASSIE, is also available. It has expandable, movable windows, and can perform multiple tasks simultaneously.

Windowpad is \$20 plus \$1.25 shipping and handling. Contact En Pleur Corp. (2494 Sun Valley Circle, Silver Spring, MD 20906, 301-598-4332) for more information. Reader Service ✓ 554

Shrinking Basic

Well-commented programs facilitate debugging and clarify program logic.

Once you're familiar with a cute program, however, these lines lose their usefulness and waste memory space.

Shrink (\$24.95) compresses Basic programs to the smallest possible size without altering program logic and data. It removes remarks and unnecessary spaces, and combines statements into as few lines as possible. You can then run

larger programs and execute programs faster.

If you need to edit a program, Break (\$19.95) puts each statement on its own line. For even clearer listings, Insert (\$19.95) puts spaces before and after each Basic operator and keyword.

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198 • 80 Micro, October 1984

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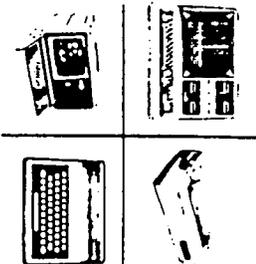
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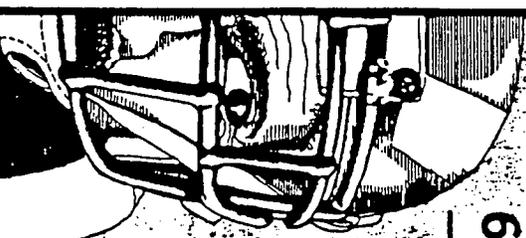
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See List of Advertisers on Page 118

80 Micro, October 1984 • 181

EXHIBIT D

Int. Cl.: 9

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,872,264
Registered Jan. 10, 1995

**TRADEMARK
PRINCIPAL REGISTER**

WINDOWS

MICROSOFT CORPORATION (DELAWARE
CORPORATION)
ONE MICROSOFT WAY
REDMOND, WA 980526399

FOR: COMPUTER PROGRAMS AND MANU-
ALS SOLD AS A UNIT; NAMELY, GRAPHICAL
OPERATING ENVIRONMENT PROGRAMS
FOR MICROCOMPUTERS, IN CLASS 9 (U.S.
CL. 38).

FIRST USE 10-18-1983; IN COMMERCE
10-18-1983.

SEC. 2(F).

SER. NO. 74-090,419, FILED 8-20-1990.

ESTHER BELENKER, EXAMINING ATTOR-
NEY

EXHIBIT 6

000022

MS 00001

EXHIBIT E



01-CV-02115-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

LINDOWS.COM, INC.,

Defendant.

CASE NO. C01-2115C

ORDER

This matter comes before the Court on plaintiff Microsoft Corporation's Motion to Determine and Certify Controlling Question of Law (Dkt. No. 312). The Court has considered the papers submitted by the parties, reconsidered the balance of the record, and determined that oral argument is not necessary. For the following reasons plaintiff's Motion is hereby GRANTED.

A district court may certify an order for interlocutory appeal if the "order involves a controlling issue of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). An issue is "controlling" if "resolution of the issue on appeal could materially affect the outcome of litigation in the district court." *In re Cement Antitrust Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1981).

1 The threshold issue to considering Microsoft's federal trademark causes of action is the validity
2 of the mark itself. If the term is found to be generic, "it cannot be the subject of trademark protection
3 under any circumstances." *Filipino Yellow Pages, Inc. v. Asian Journal Publ'ns*, 198 F.3d 1143, 1146
4 (9th Cir. 1999). There is a controlling issue of law in this case concerning the relevant and proper time
5 at which to measure whether the Windows trademark is generic. The parties have briefed the issue on
6 multiple occasions,¹ thus providing the Court with several opportunities at which to consider the issue.²
7 To date, however, the Court has not issued an explicit holding regarding the relevant time period for the
8 genericness inquiry. Recognizing that a determination on this issue could materially affect the outcome
9 of litigation, the Court finds that it is in the interests of justice and judicial economy to consider the issue
10 at the present time.

11
12 Consistent with its findings thus far, particularly its interpretation of *Surgicenters of America,*
13 *Inc. v. Medical Dental Surgeries Co.*, 601 F.2d 1011, 1014 (9th Cir. 1979), the Court declares it will
14 instruct the jury to consider whether the Windows mark was generic during the period before Microsoft
15 Windows 1.0 entered the marketplace in November 1985. Furthermore, the Court will *not* instruct the
16 jury that even if Windows were generic prior to November 1985, the trademark would nonetheless be
17

18
19 ¹ See Lindows.com's Opposition to Microsoft's Motion for a Preliminary Injunction, Dkt. No.
20 29; Microsoft's Reply Brief in Support of its Motion for Preliminary Injunction, Dkt. No. 42;
21 Microsoft's Motion for Reconsideration of Preliminary Injunction Order, Dkt. No. 67; Response by
22 Lindows.com to Motion for Reconsideration, Dkt. No. 71; Lindows.com's Motion for Summary
23 Judgment on Genericness, Dkt. No. 79; Microsoft's Opposition to Motion for Summary Judgment on
24 Genericness, Dkt. No. 109; Reply by Lindows.com in Support of Motion for Summary Judgment on
25 Genericness, Dkt. No. 125; Lindows.com's First Motion in Limine on Relevant Time Period, Dkt. No.
26 227; Microsoft's Response to Lindows.com's First Motion in Limine, Dkt. No. 263; Lindows.com's
Reply Brief in Support of its First Motion in Limine, Dkt. No. 285; Lindows.com's Opposition to
Microsoft's Motion to Determine and Certify Question of Law, Dkt. No. 315; Microsoft's Reply in
Support of Motion to Determine and Certify Question of Law, Dkt. No. 317.

² See, March 15, 2002 Order, Dkt. No. 64; May 13, 2002 Order, Dkt. No. 72; January 22, 2003
Order, Dkt. No. 159.

1 valid today so long as the primary significance of the term today is not generic.

2 The Court finds that this declaration involves a controlling question of law as to which there is
3 substantial ground for difference of opinion, as evinced by the parties extensive briefing of the issue.
4 Moreover, an immediate appeal from this Order may materially advance the ultimate outcome and/or
5 termination of the litigation. For these reasons, the Court hereby certifies the above declaration of law
6 for interlocutory appeal in accordance with 28 U.S.C. § 1292(b).

7 The Court hereby GRANTS Microsoft's Motion to Decide and Certify a Controlling Issue of
8 Law. The current Order is thus CERTIFIED for appeal pursuant to 28 U.S.C. § 1292(b). The Court
9 further STRIKES the current trial date pending the outcome of appeal.
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11 SO ORDERED this 10th day of February, 2004.

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15 CHIEF UNITED STATES DISTRICT JUDGE
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Post Office Box 40685
Raleigh, North Carolina 27629-0685
June 22, 2004

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202

Re: Brenda D. Lewis, M.A.S., JD and William L. Flowers, Jr. (husband and wife)
v. Microsoft Corporation
Mark: Windows
Registration Number: 1-872-264

Dear Sir/Madam:

Enclosed is our Petition for Cancellation of Registration Number 1-872-264 (in triplicate).

We've also enclosed a check for the required filing fee in the amount of \$300.00.

Respectfully submitted,


Brenda D. Lewis, M.A.S., JD


William L. Flowers, Jr.