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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

SENDO LIMITED, SENDO INTERNATIONAL LIMITED, SENDO HOLDINGS PLC, and SENDO AMERICA, INC.,	§	Civil Action No. 502CV282
Plaintiffs,	§	Jury Trial Demanded
v.	§	Judge: David Folsom
MICROSOFT CORPORATION, MICROSOFT LICENSING, INCORPORATED and MICROSOFT CAPITAL CORPORATION,	§	
Defendants.		

PLAINTIFFS' FIRST AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

Plaintiffs Sendo Limited, Sendo International Limited, Sendo Holdings PLC, and Sendo America, Inc. (collectively referred to as "Sendo" or the "Sendo Group") hereby file this Complaint against Microsoft Corporation (hereafter "Microsoft"), Microsoft Licensing, Incorporated (hereafter "MLI"), and Microsoft Capital Corporation (hereafter "MCC") (collectively "Defendants") and would show the Court as follows:

I.

PARTIES

1. Sendo Limited is a company incorporated and registered in the United Kingdom. It is, therefore, deemed to be a citizen of the United Kingdom.

2. Sendo International Limited is a company incorporated in the Cayman Islands and registered in Hong Kong. It is, therefore, deemed a citizen of the United Kingdom.

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3. Sendo America, Inc. is a company incorporated in the State of Delaware with its principal place of business in Texas. It is, therefore, a citizen of Delaware and Texas.

4. Sendo Holdings PLC is a company incorporated in the United Kingdom and Wales. It is, therefore, deemed a citizen of the United Kingdom.

5. Microsoft Corporation (hereinafter "Microsoft") is a company incorporated in the State of Washington with its principal place of business in that State. It is, therefore, a citizen of Washington.

6. Microsoft Capital Corporation (hereinafter "MCC") is a company incorporated in Nevada with its principal place of business in that state. It is, therefore, a citizen of Nevada.

7. Microsoft Licensing, Incorporated (hereinafter "MLI") is a company incorporated in Nevada with its principal place of business in that state. It is, therefore, a citizen of Nevada.

II.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because this is a civil action where the matter in controversy exceeds $75,000, exclusive of interest and costs, and is between citizens of different States and in which citizens or subjects of a foreign state are additional parties.

9. This Court has general jurisdiction over Defendants because their contacts with this district are substantial and continuous. This Court also has specific jurisdiction over Defendants because (1) Defendants purposefully directed their activities to this district, have done business in this district, and purposefully availed themselves of the privilege of conducting activities within this district; (2) some of the events which give rise to the claims asserted in this action occurred in this district and the effects of Defendants' tortious conduct were felt in this district; and (3) the exercise of jurisdiction comports with fair play and substantial justice.

10. The parties hereto are from Texas, the United Kingdom, Delaware, Washington, and Nevada. To the extent that any of the contracts at issue herein have an exclusive venue induced venue selection clause those provisions were fraudulently induced by Microsoft through false representations and unconscionable conduct.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because Defendants are doing business in this district, and because Defendants are subject to personal jurisdiction in this district.

III.

INTRODUCTION

12. This lawsuit is the result of Microsoft's master plan ("The Plan") to quickly obtain the technology necessary to enter and ultimately dominate the next generation mobile phone market, also known as 2.5G, created by the convergence of mobile phones and computers. The Plan to break into the 400 million units-per-year mobile handset market was created at a time when sales of Microsoft's core Windows and office software business were in decline.

13. According to Microsoft, The Plan was "totally critical to the new extended vision for the company." The Plan came at a time when Microsoft had little or no experience in the technology of mobile telephone handsets or their operating systems; nor did it have relationships with the primary customers for units, the carriers - - such as Orange, Cingular and AT&T Wireless. Microsoft had made repeated unsuccessful attempts to work with the major handset manufacturers and to attempt to license to them its planned software for handsets. Finally, Microsoft had no experience with the technical requirements that the carriers imposed upon manufacturers, some of which were the result of unwritten custom.

14. Sendo, made up of able and experienced former employees of such established mobile phone manufacturers as Phillips, Motorola and Nokia, had substantial experience in all three areas and with respect to the 2.5G market.

15. Microsoft recognized Sendo had the technology and experience it lacked to quickly penetrate this new lucrative market. As such, Microsoft set about through a secret plan ("The Secret Plan") to obtain that technology and know-how from Sendo with the false promises that Microsoft would co-develop, help finance, and be the "go to market" partner for Sendo's 2.5G Smartphone, the Z100.

16. Microsoft's Secret Plan was to plunder the small company of its proprietary information, technical expertise, market knowledge, customers, and prospective customers. Microsoft had been unable to successfully access the wireless market because the major handset manufacturers would not use their software. So instead, Microsoft gained Sendo's trust and confidence through false promises that Sendo would be its "go to market partner" with the Microsoft Smartphone platform, originally code named "Stinger." As a result of those false promises, Microsoft gained access to Sendo's hardware expertise and knowledge of the mobile carrier business. Microsoft then provided Sendo's proprietary hardware expertise and trade secrets to low cost original equipment manufacturers (OEM) (who would not otherwise have had the expertise) to manufacture handsets that would use Stinger and used Sendo's carrier-customer relationships to establish its own contractual relationships. In short, Microsoft used Sendo's knowledge and expertise to its benefit to gain direct entry into the burgeoning next generation mobile phone market and then, after driving Sendo to the brink of bankruptcy, cut it out of the picture.

IV.

BACKGROUND FACTS

17. The Sendo Group was formed in August, 1999 to focus on the design, development, manufacturing, marketing and sales of new, high performance, feature rich mobile telephones for consumer markets worldwide. Sendo Limited designs and develops certain intellectual property relating to the design and configuration of mobile telephones. Sendo International Limited owns certain intellectual property relating to the design and configuration of mobile telephones and accessories and regulatory and carrier approval processes, product pricing and customer specific order and marketing strategies. Sendo America, Inc. is a distributor of mobile telephone products and accessories developed by Sendo Limited and manufactured for or on behalf of Sendo International Limited, and possesses certain confidential information relating to the operation of the wireless telephone market in the United States. Sendo Holdings PLC is a party to several of the contracts at issue herein. Sendo Limited, Sendo International Limited, and Sendo America, Inc. are wholly owned group undertakings of Sendo Holdings PLC.

18. Microsoft was introduced to Sendo at the T99 Telecom Fair in October 1999, and the parties subsequently embarked upon discussions about the development of a new "Smartphone." Microsoft said it was interested in a collaborative development and marketing effort with Sendo to develop a Sendo Smartphone, called the Z100, that would incorporate Microsoft's new software product, code named "Stinger," featuring Internet, emails, personal information management and other data capabilities. Microsoft represented to Sendo that the Microsoft Stinger software was virtually complete and that it would deliver fully functioning software which was to be integrated into the Sendo Z100.

19. After their initial meeting, Sendo and Microsoft entered into a series of contractual agreements, beginning in October 1999 with a Non-Disclosure Agreement ("NDA"); a Strategic Development and Marketing Agreement ("SDMA") in October 2000; and various licensing agreements. The NDA contemplated the exchange of confidential information and materials between the parties relating to the potential development and marketing agreement of the Sendo Z100 Smartphone. While the parties worked towards a written development and marketing agreement, Sendo expended significant time, money and resources in furthering the development of the Z100 to operate on the Microsoft platform.

20. The SDMA called for Sendo to develop a wireless telephone incorporating the Microsoft Stinger operating system and to sell phones that would be offered for sale to operator customers using GSM/GPRS standard worldwide. Among other things, Microsoft agreed that Sendo would be Microsoft's "go to market partner" and that Microsoft would commit considerable financial and personnel resources to this development project.

21. The SDMA provided, in part, that (1) the Sendo Z100 Smartphone would be a market leading product; (2) Microsoft would prioritize the Sendo Z100 Smartphone; (3) Microsoft would pay an amount of money plus a contribution to expenses towards development of the Z100; and (4) Microsoft would receive a substantial percentage share of the Net Revenue from the sales of the Z100 as it had contributed to the development cost. The SDMA also provided that "[a]s a part of the overall strategic relationship between the parties and pursuant to separate agreements, Microsoft will invest in Sendo Holdings PLC pursuant to an Investment Agreement." The SDMA was conditioned on the Investment Agreement being entered into by December 2000, and the target launch date for the Sendo Z100 complete with the Stinger software was set for August 2001. Sendo trusted Microsoft's representations about the readiness

of its Stinger software and that Microsoft could deliver fully functioning software well in advance of the target launch date. In reliance on these representations, Sendo continued to commit its resources to the development and marketing of the Z100 Smartphone and changed its business plans and financial models accordingly. By December 2000, Sendo had completed two milestones under the SDMA and a substantial sum was due from Microsoft but was as yet unpaid. Microsoft delayed paying the substantial sum thereby severely and negatively impacting Sendo's cash flow.

22. On or about February 19, 2001, Sendo and Microsoft jointly announced the execution of the SDMA at the 3GSM World Congress in Cannes, France, and unveiled a prototype of the Sendo Z100 Smartphone. Launch of the Z100 was projected for August 2001, based on information provided by Microsoft that (1) Stinger was "code complete" and that it would be released to manufacturer ("RTM") by June 2001; and (2) Microsoft would provide significant development support for the product.

23. Despite the condition in the SDMA that the parties enter into an "Investment Agreement" by December 2000, the agreement, which was later titled "Shareholders' Agreement," was not executed until May 2001 but Sendo continued to work on the development in good faith. Pursuant to the Shareholders' Agreement and related agreements, Microsoft subscribed to shares in Sendo Holdings PLC worth $12 million and was entitled to appoint a representative as a Director on the Board of Directors of Sendo Holdings PLC. Microsoft also agreed to act in good faith.

24. Throughout 2001, Sendo worked diligently to integrate the Z100 with the Microsoft software, expending great time, resources and money. Sendo's progress was retarded by Microsoft's failure to timely perform its obligations and Sendo informed Microsoft of

numerous critical problems with the Stinger software and features that it was missing, but Microsoft failed to take steps to remedy the software bug fixes and other problems in a timely manner. The Microsoft software was still not ready in May 2001 and the target launch date for the Z100 was pushed back to December 2001. By May 2001, Sendo had completed three of the four milestones required of it under the SDMA, but by June 2001, Microsoft had failed to deliver the quality of Stinger software promised, causing Sendo critical delay in its ability to complete the Z100 integration. Despite numerous previous representations by Microsoft that the Stinger software was "code complete," it was becoming clear that it was not.

25. By late 2001, as a result of Microsoft's delays in delivering fully functioning software and making payments on expenses called for under the SDMA, Sendo had incurred unnecessary and unanticipated costs. Sendo requested that Microsoft fund all or portions of those costs as they were the result of Microsoft's conduct. Microsoft refused, placing additional capital constraints on Sendo.

26. By December 2001, Microsoft's Stinger software was still not ready and numerous issues remained to be remedied to meet the regulatory and operator approval processes before the Z100 Smartphones could be brought to market. Sendo informed Microsoft of these issues, including identification of bugs in the software and changes that would be required by the carriers and regulators, but Microsoft responded that it would not remedy the defects in its software.

27. The continued delay in the launch of the Z100 Smartphone created a cash flow crisis for Sendo which had planned to begin shipments of the Z100 first in August and then in December 2001. Sendo sought further funding from the venture capital community but was unable to secure this financing because inter alia it could not guarantee a release date for the

Z100 which was Microsoft software dependent. The financial outlook for Sendo was addressed at several Board of Directors Meetings where Microsoft's appointee to the Board, Marc Brown, was privy to confidential, proprietary information concerning Sendo's business and finances. Microsoft, through its agent Marc Brown, knew that Sendo was rapidly depleting its working capital by funding the development overruns caused by Microsoft's delays and that Microsoft's failure to deliver the Microsoft Stinger software and related development issues would delay the launch of the Z100 for several more months. Sendo approached Microsoft and asked it to exercise the warrants it had for shares in order to inject further funds into the company. Microsoft refused with the full knowledge that this refusal would push Sendo toward insolvency. Under the SDMA, in the event of a Sendo bankruptcy, Microsoft would obtain an irrevocable royalty free license to use Sendo's Z100 intellectual property, including rights to make, use, or copy the Sendo Smartphone to create other Smartphones and to, most importantly for Microsoft sublicense those rights to third parties.

28. Instead, on December 10, 2001, Marc Brown, who was not only a Director on the Sendo Board but Director of Microsoft's Corporate Development & Strategy Group, submitted a term sheet to Sendo for a possible secured loan in an amount up to $14 million on certain terms and conditions. This proposal was later changed by MCC to a loan payable by way of three installments: one at $8 million and two at $3 million. On or about February 11, 2002, Sendo entered into the Term Credit Agreement ("Credit Agreement") with MCC. The loan provided for a number of target requirements relating to Sendo's revenue and cash flow, sales of Z100 Smartphones, and included a provision that MCC could call the loan if those targets were not met. Sendo's ability to achieve the targets that were imposed by MCC in the Credit Agreement

were dependent, however, upon Microsoft delivering the Stinger software and other internal requirements in a timely manner.

29. On February 14, 2002, MCC gave notice that it would not fund the first advance of $8 million but instead stated that it would split that advance into two separate installments of $2 million and $6 million. Meanwhile, Microsoft continued to weaken Sendo's financial condition through a number of actions. Microsoft now demanded that Sendo build 300 Z100 test unit phones for Microsoft engineers so that they could work on the phones in Microsoft's labs. Sendo had to shut down its production line for its other phones in order to build the phones for Microsoft at a cost of $3.6 million. Sendo invoiced Microsoft for added expense as the parties had agreed, but Microsoft refused to pay the invoice or make any offer of contribution.

30. In March 2002, Sendo continued its development and marketing efforts to secure commitments for orders for the Z100 from its customers, including carriers such as Orange SA, Cingular, Telefonica of Spain, Vodafone Omnitel, T-Mobile in the United Kingdom, SFR in France, CSL in Hong Kong, and Wind of Italy. Sendo also met the fourth and final milestones under the SDMA. Another $1.5 million was due from Microsoft but it, again, refused to pay. Microsoft now insisted that the Sendo Z100 meet and comply with new tests that were not previously required, contractually or otherwise, and in many instances, had not even been written by Microsoft or finalized.

31. Throughout the spring of 2002, Microsoft continued its dilatory tactics and was unresponsive to Sendo's repeated requests to cure the bugs and to make software changes required by the operators relating to the Microsoft Stinger software so as to make the Z100 launch ready. By the middle of May, 2002, the only software for the Z100 phone that had been released by Microsoft was interim software which was not ready for final release, and Microsoft

still refused to pay Sendo the final, fourth installment of $1.5 million due under the SDMA (which had been invoiced in March). Notwithstanding Microsoft's role in the delay of the target forecasts for the Z100, MCC refused to excuse Sendo from the target requirements and threatened to claim default against Sendo under the Credit Agreement. MCC refused to advance the next installments under the Credit Agreement claiming that it was excused from fulfilling its obligations because Sendo had failed to meet the conditions for the second and third advances.

32. Nonetheless, Sendo continued to pursue sales of the Z100 Smartphone with the operators. In good faith, Sendo invited Microsoft to attend as many meetings with the carriers, including Orange, Vodafone, Cingular, UK France Telecom, and AT&T, as they could to "show our joint customers we have a coordinated plan and are working together to really bring these products to market." These invitations were extended and accepted by Microsoft which helped further gain entry to important customer contacts and relations.

33. On May 22, 2002, there was a meeting of the Sendo Board of Directors to discuss *inter alia*, the company's cash requirements. During this meeting, Marc Brown reiterated that Microsoft was still committed to Smartphones; that it wanted a presence with the carriers; that Microsoft and Sendo were "go to market partners"; and that, contrary to appearances, Microsoft was not de-emphasizing its commitment to Sendo. Brown further stated that Microsoft was not working with anyone else as an "initial go to market partner."

34. At a further Board Meeting on May 27, 2002, Microsoft, through its representatives Marc Brown and Kevin Dallas (who had been invited to attend by the Board), unexpectedly informed the Board that Microsoft was going to conduct a multi-day, full review of Sendo and its progress on the Z100 at Sendo's facilities and with Sendo's engineers. This review was, according to Microsoft, a condition of its continued involvement in the Z100

project. Microsoft demanded detailed information of the technical aspects of the whole project and demanded full co-operation in the disclosure of any information that the Microsoft technical team asked for, including access to technical drawings and schematics and interviews with engineers.

35. Microsoft also demanded that Sendo suspend other phone development projects so that all resources could be allocated to delivering the Z100 as soon as possible. But for Microsoft's dilatory conduct in fulfilling its commitments this would have been unnecessary. A natural consequence of this allocation of resources was that sales of other Sendo products declined due to lack of internal resources and support, as new product offerings were delayed and sales were missed. This also meant that Sendo became dependent on the success of the Z100 as it would not have new models of phones for an extended period after the launch of the Z100. These demands were all part of Microsoft's Secret Plan to appropriate Sendo's technology and customer relationships while driving Sendo to insolvency and ultimately out of existence. The benefit to Microsoft, of course, was that it would be able to own the technology and share it with Far Eastern OEM companies who could make Microsoft based products – thereby creating a bigger marketplace for itself.

36. At the May 27, 2002 board meeting, Dallas said that Microsoft was developing a kit and tests with Sendo as the "go to market partner." that if Sendo was to ship phones by a certain date then Microsoft needed to be convinced that this was a quality product. Sendo, in fact, had units ready for the operators to start testing and some units would be ready to be delivered to Microsoft and developers in June 2002.

37. During the product review at Sendo, Microsoft employees were furnished with and/or given access to additional detailed Sendo confidential business and trade secret

information. But for Mr. Brown's position of trust and confidence as a member of Sendo's Board of Directors and the fiduciary relationship between Sendo and Microsoft, and Microsoft's assurances of confidentiality and continued representations that Sendo was Microsoft's "go to market" partner for its Smartphone offering, Sendo would not have allowed Microsoft such unbridled access to Sendo confidential and trade secret information during the project review. They were not entitled to such information under the terms of the SDMA. Having carried out the review, Microsoft did not formally abandon the project with Sendo but it never fully engaged again from a technical perspective. At or near this time, Sendo was told that the Microsoft engineers working on Smartphone 2002 were being taken off that project and moved to work on Smartphone 2003. Microsoft said that Smartphone 2003 was delayed because of the delay in the release of Smartphone 2002, and, as a result, the Microsoft development team needed to focus on development of Smartphone 2003. That statement was false as Sendo later discovered.

38. By letter dated June 13, 2002, MCC proposed to advance the second and third installments of the loan upon new conditions, subject to Sendo agreeing to new, non-negotiable terms proposed by Microsoft, and if Sendo had signed agreements for 150,000 units from target carriers.

39. In the summer and fall of 2002, Marc Brown took actions which violated his fiduciary capacity as a Director of Sendo. Mr. Brown manipulated circumstances to the benefit of Microsoft and MCC and to the detriment of Sendo. Mr. Brown failed to disclose information to Sendo required of him as a Sendo Director. Among the several hats Brown wore were: (1) Director of Microsoft's Corporate Development & Strategy Group, who made representations to Sendo that they were "go to market partners" and who, together with Kevin Dallas, participated in setting the target dates and requirements under the SDMA; (2) Director on the Sendo Board;

(3) acting on behalf of MCC in negotiating repayment and terms of the Credit Agreement; and (4) liaison between Microsoft, MCC, and Sendo.

40. By letter dated September 16, 2002, Sendo again requested development support from Microsoft and a firm commitment to delivery of the Stinger software. Sendo also asked for a waiver of the targets under the Credit Agreement for the end of September as it was clear that the Microsoft Stinger software was still delayed and would not be ready in the near future.

41. At the September 23rd Board meeting, Marc Brown advised the Board that Microsoft would not agree to allow Bowman Capital (another shareholder of Sendo) to subscribe for shares to provide much needed funding; nor would Microsoft exercise its warrants. Brown also informed the Board that MCC would have to wait until after October 1st before they would agree to waive the anticipated missed September targets for the Z100.

42. Sendo was still having difficulty securing outside funding from venture capital funds because of concerns in part regarding Microsoft's ability to control the operation of Sendo. Before and during October, Microsoft, through Marc Brown, suggested that Sendo consider filing for bankruptcy and was complicit in requiring that MCC carry out and call for a full review of Sendo's business by the accounting firm KPMG which ultimately went through Sendo's financials in detail. Sendo cooperated fully with Microsoft's requests.

43. On or about October 22, 2002, Microsoft and Orange SA, one of Sendo's carrier-customers, unveiled a Microsoft Windows-Powered Smartphone using the Stinger software and manufactured by High Tech Computer ("HTC"), a Taiwanese "OEM." *Wireless.NewsFactor.com* reported: "The Orange SPV marks Microsoft's entry into the increasingly competitive converged voice/data device market. . . The new Smartphone features a color screen, a Web browser and Windows-based applications that support wireless e-mail,

instant messaging. . . and multimedia content. In addition, its tri-band phone function offers international voice communications over advanced GSM/GSPRS . . . networks." "This handset was designed to be a phone first, combining beauty and brains," Ed Suwanjindar, product manager for Microsoft's mobile devices division, told NewsFactor. Upon information and belief, Microsoft provided HTC with pre-release or test versions of the Sendo Z100 to aid in the development of the Microsoft/HTC product offering.

44. Meanwhile, on information and belief, Microsoft also made sales calls to T-Mobile, Telefonica and Wind (even though Microsoft had told Sendo that Telefonica and Wind were not target customers) without Sendo's knowledge (and behind its back), to sell the OEM devices in preference to the Sendo Z100 Smartphone.

45. On October 28, 2002, Marc Brown resigned from the Sendo Board. On the next day, Sendo terminated the SDMA. On terminating the SDMA, Sendo demanded from Microsoft the return of its confidential, proprietary and trade secret information. On November 4, 2002, Sendo also repaid the MCC loan under The Credit Agreement.

46. Throughout November 2002, Sendo made repeated requests upon Microsoft for the return of all Sendo Deliverables and intellectual property including, but not limited to, software source code and the Sendo Z100 phones provided to HTC and any other third party. Microsoft has failed and refused to return the Sendo information identified above, and, upon information and belief, is using and/or disclosing some or all of it for its own unjust enrichment.

47. On November 25, 2002, *Communications Week International* quoted Microsoft's Vince Mendillo as saying that Microsoft has a "wide variety" of agreements (with Sendo's carrier-customers) including AT&T Wireless, Cingular, Verizon, CSL, HK, Telefonica and Wind: "We've been talking with all these mobile operators . . .to reaffirm their commitment to

the Microsoft platform." Additionally, Yankee Group analyst, John Jackson, is reported to have remarked: "Microsoft, through HTC, finally has put together a compelling converged device. . . I'm impressed by the speed with which Microsoft and HTC brought this device to market." Consequently, despite Microsoft's many misrepresentations to Sendo that it would be Microsoft's "go to market partner," Microsoft had other plans. The "speed to market" was achieved not by Microsoft's legitimate skill and expertise, but rather by its Secret Plan to pillage Sendo of its technology, convert that technology to its own use, steal Sendo's customers, and leave Sendo cash starved and on the brink of receivership.

48. Upon information and belief, Microsoft disclosed to HTC and other low cost OEM some or all of the confidential information and trade secrets it had acquired from Sendo including, but not limited to, supplying OEM with pre-release versions of the Z100 Smartphone. On information and belief, Microsoft also used Sendo's confidential business information and customer relationships to enter into carrier agreements. By going to market directly with Sendo's carrier-customers, and going directly to the low cost hardware manufacturers with Sendo's reference design, Microsoft has, among other things, (1) obtained an unfair competitive advantage; (2) tortiously interfered with Sendo's business relationship and prospective business relationships; and (3) caused Sendo to lose sales and suffer damage to its business image and reputation.

49. As a result of Microsoft's numerous acts of unfair competition together with the cooperation and coordinated efforts of Marc Brown and MCC, Sendo has suffered undetermined damages and injury.

V.

CAUSES OF ACTION

COUNT I
MISAPPROPRIATION OF TRADE SECRETS

50. Sendo incorporates and re-alleges in full paragraphs 1 through 49 of this Complaint. The foregoing acts of Defendants constitute misappropriation of Sendo's trade secrets and unjust enrichment and enhanced value of Defendants' business activities to Sendo's detriment and injury.

51. Sendo has developed through the expertise and knowledge of its directors, managers, and engineers, and by trial and error, planning, and strategy, a number of trade secrets relating to its operation of a mobile telephone development and manufacturing business. Sendo has taken and continues to maintain reasonable efforts to maintain the secrecy of its trade secrets.

52. Sendo's trade secrets are not known, nor readily available outside of Sendo, and are known by and available only to certain of Sendo's key employees on a need to know basis. This information is valuable to Sendo's competitors and is not easily duplicated. Such information also provides a competitive advantage to Sendo. Indeed, Sendo has spent significant time, effort, and resources in developing its trade secrets.

53. Defendants came to learn certain of Sendo's trade secrets through three (3) years of discussions with Sendo personnel in connection with the development of the Z100 Smartphone. Upon information and belief, Sendo alleges that Defendants have used and/or disclosed Sendo's trade secrets in connection with its development of a competing Smartphone product offering.

54. Sendo has suffered damages in excess of the minimal jurisdictional limits of this Court as a result of Defendants' misappropriation of trade secrets.

COUNT II
COMMON LAW MISAPPROPRIATION

55. Sendo incorporates and re-alleges in full paragraphs 1 through 54 of this Complaint. The foregoing acts of Defendants constitute misappropriation of Sendo's confidential and proprietary information and unjust enrichment to Defendants' business activities to Sendo's detriment and injury.

56. Sendo possesses unique pecuniary interests in the development and operation of its mobile telephone manufacturing business created over time through expenditures of considerable labor, skill, and money. Sendo's confidential and proprietary information relating to the development and operation of its mobile telephone manufacturing business was created through years of trial and error, planning and strategy, and extensive costs analysis. Sendo has spent millions of dollars and thousands of man-hours to develop, refine, and implement its mobile telephone manufacturing business. Microsoft has used this information in competition with Sendo and thereby has obtained a special advantage in that competition.

57. Sendo has been proximately injured by this misappropriation because its competitive advantage in the mobile telephone manufacturing business market place has been substantially eroded. Defendants' actions have caused damages to Sendo in excess of the minimal jurisdictional limits of this Court.

COUNT III
CONVERSION

58. Sendo incorporates and re-alleges in full paragraphs 1 through 57 of this Complaint. The foregoing acts of Defendants constitute conversion of Sendo's property.

59. Defendants are currently in possession of Sendo's property, including but not limited to Sendo's company confidential information including strategies and plans, source code, trade secrets embodied in documents, Z100 mock-ups or demo units, pre-production testing

units, and source code for several key drivers. Demand has been made upon Microsoft for the return of all Sendo information and property acquired by Microsoft during the parties' business relationship. Defendants have failed to return Sendo's information and, upon information and belief, are using some or all of that information in direct competition with Sendo.

60. Defendants' conversion of Sendo's property has caused damages to Sendo in excess of the minimal jurisdiction limits of this Court.

COUNT IV
UNFAIR COMPETITION

61. Sendo incorporates and re-alleges in full paragraphs 1 through 60 of this Complaint. The foregoing acts of Defendants constitute unfair competition and unjust enrichment in their unauthorized use of Sendo's trade secrets and confidential proprietary information which has enhanced and benefited Defendants' business activities to Sendo's detriment and injury.

62. Defendants have embarked upon a deliberate scheme to acquire and have acquired a blueprint of Sendo's business in an effort to build a competing enterprise either solely or in collaboration with another manufacturer or manufacturers. In so doing, Defendants sought to benefit and have unfairly benefited from the wrongful actions set forth herein. Sendo has a vested interest in a property right worthy of protection to keep its trade secret and confidential information private. Throughout the parties' business relationship Defendants acquired confidential and trade secret information relating to Sendo's business operations. Defendants have profited at the expense of Sendo without consent, justification, privilege or excuse, and have wrongfully received the benefits of Sendo's time, effort, labor and expense to which they are not entitled.

63. Defendants' conduct has caused Sendo damages in excess of the minimal jurisdictional limits of this Court.

COUNT V
FRAUD

64. Sendo incorporates and re-alleges in full paragraphs 1 through 60 of this Complaint. The foregoing acts of Defendants constitute fraud.

65. Upon information and belief, Defendants intentionally made numerous false material representations to Sendo during the parties' business relationship knowing that Sendo would act in reliance upon those representations to its detriment. By way of example, Defendants promised to provide Sendo with further advances, under the Credit Agreement, and further technical support, if Sendo could secure a commitment from suppliers to place orders for parts and materials for the Z100. Defendants also induced Sendo to encourage Sendo's suppliers to extend credit for the purchase of parts and materials for the Z100. In reliance upon that representation, Sendo secured agreement from suppliers to place orders for parts, but Defendants refused to release the funds, or provide the technical support, causing damage to Sendo's goodwill and business reputation, and causing actual damage to Sendo for the cost of those parts that it is liable to pay to those suppliers because the parts are no longer required.

66. Defendants falsely represented the status of its Stinger software, including the fact that it was "code complete" in May 2001, when, in fact, it knew or reasonably should have known that was not the case. Microsoft duped Sendo into opening its laboratory to Microsoft for a detailed four (4) day product review based upon Microsoft's representation that it intended to decide whether to proceed with development of the Z100 Smartphone when in fact that was not the case – the real reason was to get access to Sendo's confidential information. In addition, Microsoft, up until September, 2002, made repeated representations to Sendo that it was its "go

to market" partner for Smartphones, when in fact that was not the case. Defendants falsely stated that Microsoft had focused all of its development efforts on Smartphone 2003 release software, when in fact that was not the case as it merely diverted its Smartphone 2002 development support to other manufacturers. Defendants made these representations to induce Sendo to continue to proceed with the development of the Z100 Smartphone, commit time, resources and expense and to share trade secret and confidential and proprietary information relating to the operation of its mobile telephone manufacturing business.

67. Defendants induced Sendo to make forecasts and projections to its detriment and to enter the Credit Agreement insisting upon certain performance milestones which were expressly contingent upon successful launch of the Z100 Smartphone. At the time the Credit Agreement was executed, Defendants knew they were unwilling or would be unable to deliver a fully functioning software platform to Sendo in time for Sendo to launch the Z100 and, consequently, meet the performance milestones.

68. At the time these representations were made, Defendants knew that the statements were false and, specifically, that Microsoft had no intention of going to market with Sendo. Defendants' actions in this regard constitute common law fraud and were committed willfully and knowingly.

69. Sendo reasonably relied upon the Defendants' fraudulent representations to its detriment and has suffered damages in excess of the minimal jurisdictional limits of this Court as a result. Accordingly, Sendo seeks recovery from Defendants for all damages available under the law.

COUNT VI
BREACH OF FIDUCIARY DUTY

70. Sendo incorporates and re-alleges in full paragraphs 1 through 69 of this Complaint. The foregoing acts of Defendants constitute breach of fiduciary duty.

71. A confidential fiduciary relationship existed between Microsoft and Sendo as a result of the parties' business relationship and course of dealing, certain contractual agreements executed by the parties, and placement of Microsoft's employee/representative, Marc Brown, on the Sendo Board of Directors. During the parties' business relationship, Defendants obtained a blueprint of Sendo's mobile telephone manufacturing business, technical knowledge and operator information. Through Marc Brown's position as a Director on the Sendo Board, Defendants also gained knowledge, access and influence over Sendo's finances and had a duty to disclose information to Sendo. Defendants' fiduciary duties to Sendo were breached. Defendants had a fiduciary duty to act with fair and honesty, a duty of full disclosure and to refrain from self-dealing. Defendants used their special relationship with Sendo and Sendo's confidential proprietary information to Defendants' advantage and benefit and to Sendo's detriment.

72. Such conduct has caused Sendo damages in excess of the minimum jurisdictional limits of this Court.

COUNT VII
NEGLIGENT MISREPRESENTATION

73. Sendo incorporates and re-alleges in full paragraphs 1 through 72 of this Complaint.

74. The foregoing acts of Defendants constitute negligent misrepresentations to Sendo in furtherance of their business objective. In making such representations, Defendants failed to exercise reasonable care in communicating this information to Sendo. Sendo justifiably

relied upon the representations of Defendants made during the parties business relationship only to find out later that such representations were false and merely a pretext for Defendants' true intentions.

75. Sendo has suffered actual damages as a result of Defendants' negligent misrepresentations in excess of the minimal jurisdictional limits of this Court.

COUNT VIII
CIVIL CONSPIRACY

76. Sendo incorporates and re-alleges in full paragraphs 1 through 75 of this Complaint.

77. Defendants conspired to commit the foregoing unlawful acts and such acts show concerted action of Defendants in the furtherance of a common design including, but not limited to, misappropriation of Sendo's confidential information and trade secrets to unfairly compete with Sendo.

78. Defendants' actions have caused Sendo significant damages in excess of the minimal jurisdictional limits of this Court. Accordingly, Sendo seeks recovery from Defendants, each of them, jointly and severally, for all damages sustained by Sendo and exemplary damages as permitted by law.

COUNT XIV
PERMANENT INJUNCTION

91. Upon final adjudication of the merits, Plaintiffs Sendo Limited, Sendo International Limited, Sendo Holdings PLC, and Sendo America, Inc., respectfully request an order from this Court providing for a permanent injunction enjoining Defendants from the following acts:

a. use of Microsoft software in any product within which Sendo has established a violation of Counts I through XIII by the Defendants;

b. Defendants' production licensing or financing the production of any product within which Sendo has established a violation of Counts I through XIII by the Defendants; and

c. Defendants' marketing, promoting, financing, licensing or otherwise assisting in the sale or distribution of any product within which Sendo has established a violation of Counts I through XIII by the Defendants.

COUNT IX
BREACH OF CONTRACT

79. Sendo incorporates and re-alleges in full paragraphs 1 through 78 of this Complaint. The foregoing acts of Defendants constitute breaches of the NDA, SDMA, the Shareholders' Agreement, the Software Source Code License Agreement and Credit Agreement contracts. Plaintiff has performed all conditions precedent to performance under the contracts.

80. Defendants' actions have caused Sendo damages in excess of the minimal jurisdictional limits of this Court.

COUNT X
TORTIOUS INTERFERENCE

81. Sendo incorporates and re-alleges in full paragraphs 1 through 80 of this Complaint.

82. The foregoing acts of Defendants constitute tortious interference with existing contracts and prospective business relations for which there was a reasonable probability that the contracts would have been made but for Defendants' acts. Such acts were unlawful, fraudulent, and committed willfully and intentionally, without justification.

83. Defendants' actions have caused Sendo damages in excess of the minimal jurisdictional limits of this Court.

COUNT XI
PUNITIVE DAMAGES

84. Sendo incorporates and re-alleges in full paragraphs 1 through 83 of this Complaint.

85. The tortious conduct committed by Defendants, above, was aggravated by the kind of willfulness, wantonness and malice for which the law allows the imposition of punitive damages. Defendants' conduct was intentional, willful and wanton, and without justification or excuse. To punish such action and to deter others from similar wrongdoing, Defendants should be jointly and severally assessed of punitive damages in an amount determined by the trier of fact.

COUNT XII
CONSTRUCTIVE FRAUD

86. Sendo incorporates and re-alleges in full paragraphs 1 through 85 of this Complaint.

87. The foregoing acts of Defendants constitute fraud and have caused Sendo damages in excess of the minimal jurisdiction limits of this Court.

COUNT XIII
FRAUDULENT INDUCEMENT

88. Sendo incorporates and re-alleges in full paragraphs 1 through 87 of this Complaint.

89. Defendants made material, false representations of fact to Sendo to induce Sendo to enter into the NDA, SDMA, the Shareholders' Agreement, the OEM Embedded Operating Systems Licensing Agreement for Reference Platform Devices, and the Credit Agreement. By way of example, Microsoft falsely represented that it was interested in a collaborative development and marketing effort with Sendo to develop a Sendo Smartphone when that was not

the case. Moreover, Microsoft falsely represented the status of the Stinger software, including the fact that it was virtually "code complete," when, in fact, it knew or reasonably should have known that was not the case. Microsoft also made repeated representations to Sendo that Sendo was Microsoft's "go to market" partner and that Microsoft was committed to the development of a Sendo Smartphone that would incorporate Microsoft's Stinger software. Defendants knew their representations were false when made, or were asserted without knowledge of the truth, and were made with the intention that Sendo act on those representations.

90. Sendo reasonably relied upon Defendants' false representations to its detriment and has suffered damages in excess of the minimal jurisdictional limits of this Court as a result. Accordingly, Sendo seeks recovery from Defendants for all damages available under the law.

COUNT XIV
PERMANENT INJUNCTION

91. Upon final adjudication of the merits, Plaintiffs Sendo Limited, Sendo International Limited, Sendo Holdings PLC, and Sendo America, Inc., respectfully request an order from this Court providing for a permanent injunction enjoining Defendants from the following acts:

a. use of Microsoft software in any product within which Sendo has established a violation of Counts I through XIII by the Defendants;

b. Defendants' production, licensing, or financing the production of any product within which Sendo has established a violation of Counts I through XIII by the Defendants; and

c. Defendants' marketing, promoting, financing, licensing, or otherwise assisting in the sale or distribution of any product within which Sendo has established a violation of Counts I through XIII by the Defendants.

VI.

ATTORNEYS' FEES

92. Pursuant to the contracts and Texas Civil Practice & Remedies Code Section 38, Sendo is entitled to recover its reasonable attorneys' fees incurred in enforcing its rights. Sendo seeks the recovery of its reasonable attorneys' fees from Defendants.

VII.

JURY DEMAND

93. Plaintiffs request a trial by jury.

PRAYER

WHEREFORE, Plaintiffs Sendo Limited, Sendo International Limited, Sendo Holdings PLC and Sendo America, Inc., respectfully request that after a final trial hereof, the Court enter judgment in favor of Plaintiffs against Defendants on all counts, jointly and severally, and award Plaintiffs the following:

(1) All general damages;

(2) Special damages arising from Defendants' conduct, including, but not limited to, lost profits, loss of good will, reliance damages, and incidental damages;

(3) Defendants' profits arising from their tortious acts;

(4) Costs;

(5) Pre-judgment interest;

(6) Post judgment interest;

(7) Attorney's fees;

(8) Exemplary damages,

(9) Permanent injunction enjoining Defendants from those acts described in Count XIV, Permanent Injuction, ¶ 91; and

(10) Such other and further relief to which Plaintiffs may prove themselves entitled.

Respectfully submitted,

PATTON, HALTOM, ROBERTS, McWILLIAMS & GREER, L.L.P.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing instrument was sent as indicated to the following counsel on this 18 day of February, 2003:

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