

1 JOSEPH M. BURTON (SB No. 142105)
STEPHEN H. SUTRO (SB No. 172168)
2 GREGORY G. ISKANDER (SB No. 200215)
DUANE MORRIS LLP
3 One Market Plaza, Spear Tower
Suite 2000
4 San Francisco, CA 94105
Telephone: (415) 371-2200
5 Facsimile: (415)371-2201

6 Attorneys for Defendant
ELCOMSOFT COMPANY, LTD.
7

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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 UNITED STATES OF AMERICA

13 Plaintiff,

14 v.

15 ELCOM LTD.,
16 a/k/a ELCOMSOFT CO., LTD.,

17 Defendant.
18

Case No.: CR 01-20138 RMW

**DEFENDANT'S PRETRIAL
CONFERENCE STATEMENT**

Date: October 21, 2002
Time: 9:00 a.m.
The Honorable Ronald M. Whyte

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20 Pursuant to 17.1-1(b), Defendant ELCOMSOFT CO., LTD. respectfully submits this Pretrial
21 Conference Statement.

22 **I. TRIAL DATE**

23 Trial is scheduled to commence on Monday, October 21, 2002 at 9:00 a.m. in the above-
24 referenced Court, located at 280 S. First Street, 4th Floor, San Jose, California.

25 **II. DISCOVERY**

26 There are no discovery issues at this time.

27 **III. MOTIONS**

28 All pretrial motions have been filed, heard and determined.

1 **IV. PRETRIAL CONFERENCE ISSUES**

2 The Pretrial Conference is scheduled for Thursday, October 17, 2002 at 2:00 p.m.

3 **A. Use of Statements and Reports**

4 _____ Defendant has been appropriately assured by the government that defendant previously
5 received all Jencks material.

6 **B. Disclosure and Use of Grand Jury Testimony**

7 Defendant does not anticipate that there will be any use of grand jury testimony at the trial.

8 **C. Disclosure of Exculpatory Or Favorable Evidence**

9 Defendant has been appropriately assured by the government that defendant previously
10 received any exculpatory or other material favorable to the defendant.

11 **D. Stipulation of Facts**

12 The parties are amenable to appropriate stipulations, but at this point have not determined that
13 any are necessary.

14 **E. Appointment of Court Interpreters**

15 There is a continuing need for a certified English to Russian, Russian to English interpreter.

16 **F. Dismissal of Counts and Elimination of Issues**

17 This issue is not applicable to this trial.

18 **G. Joinder or Severance**

19 This issue is not applicable to this trial.

20 **H. Identification of Informers and Use of other Character Evidence**

21 The government has assured the defendant that there were no informers used in this case.
22 Further, the defendant understands that the government will not make use of prior act evidence.

23 **I. Pretrial Exchange of Lists of Witnesses**

24 The parties have met to discuss the witnesses who will appear in their respective cases in
25 chief. The defendant does not anticipate any issues arising in regard to witnesses.

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J. Pretrial Exchange of Documents and Exhibits

The parties are scheduled to meet to view the documents that each will use in their respective cases in chief. There has not been, at this time, an actual exchange of such documents and/or potential exhibits. The parties expect to do this immediately after the pretrial conference. The defendant does not anticipate any significant issues arising with regard to the proposed exhibits.

K. Pretrial Resolution to Objections to Exhibits or Testimony

Defendant anticipates filing a small number of *in limine* motions after it has reviewed the government's anticipated trial evidence. Defendant believes that these *in limine* motions can be determined during the course of the trial.

L. Preparation of Trial Briefs

Defendant, at this time, does not anticipate the need for trial briefs.

V. WITNESSES

Each party has filed a witness list with the Court.

VI. EXHIBITS

Each party has filed an exhibit list with the Court.

VII. JURY INSTRUCTIONS

The parties have each filed separate sets of jury instructions for use at trial. In addition, the parties will submit objections to the Court.

VIII. VOIR DIRE

In addition to the Court's Juror Questionnaire and Voir Dire, the defendant seeks limited follow-up voir dire on the following topics:

- (1) Jurors general feeling and opinions about Russia, Russian citizens and Russian companies doing business in the United States;
- (2) Jurors familiarity, feelings and opinions about the copyright system and current copyright issues and controversies;

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(3) Jurors familiarity with Adobe, Inc. and its products, specifically Adobe Acrobat, and Portable Document Format (PDF).

Dated: October __, 2002.

DUANE MORRIS LLP

JOSEPH M. BURTON
STEPHEN H. SUTRO
GREGORY G. ISKANDER
ATTORNEYS FOR DEFENDANT
ELCOMSOFT COMPANY LTD.

SF-34249

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3 **PROOF OF SERVICE**

4 I am a resident of the state of California, I am over the age of 18 years, and I am not a party to
5 this lawsuit. My business address is Duane Morris LLP, One Market Plaza, Spear Tower, Suite
6 2000, San Francisco, California 94105. On the date listed below, I served the following
7 document(s):

8
9 **DEFENDANT'S PRETRIAL CONFERENCE STATEMENT**

10 by transmitting via facsimile the document(s) listed above to the fax number(s) set forth
11 below on this date during normal business hours. Our facsimile machine reported the "send"
12 as successful.

13 by placing the document(s) listed above in a sealed envelope with postage thereon fully
14 prepaid, in the United States mail at San Francisco, California, addressed as set forth below.

15 I am readily familiar with the firm's practice of collecting and processing correspondence for
16 mailing. According to that practice, items are deposited with the United States mail on that
17 same day with postage thereon fully prepaid. I am aware that, on motion of the party served,
18 service is presumed invalid if postal cancellation date or postage meter date is more than one
19 day after the date of deposit for mailing stated in the affidavit.

20 Scott H. Frewing
21 Assistant United States Attorney
22 United States District Court
23 Northern District of California
24 280 South First Street
25 San Jose, CA 95113

26 by placing the document(s) listed above in a sealed envelope with postage thereon fully
27 prepaid, deposited with Federal Express Corporation on the same date set out below in the
28 ordinary course of business; to the person at the address set forth below, I caused to be served
a true copy of the attached document(s).

by causing personal delivery of the document(s) listed above to the person at the address set
forth below.

by personally delivering the document(s) listed above to the person at the address set forth
below.

I declare under penalty of perjury under the laws of the State of California that the above is
true and correct.

Dated: October ____, 2002

Lea A. Chase

SF-34249