

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

IP INNOVATION L.L.C. and)	
TECHNOLOGY LICENSING CORP.,)	
)	
Plaintiffs/Counterclaim)	
Defendants,)	
)	
v.)	
)	
RED HAT, INC. and)	
NOVELL, INC.)	
)	
Defendants.)	

Civil Action No. 2:07-cv-447 (LED)
Jury Trial Demanded

**DEFENDANT/COUNTERCLAIM PLAINTIFF NOVELL, INC.’S
ANSWER, DEFENSES, AND COUNTERCLAIMS TO PLAINTIFFS’
COMPLAINT FOR PATENT INFRINGEMENT**

Defendant/Counterclaim Plaintiff Novell, Inc. (“Novell”), by and through its attorneys, hereby answers the Complaint for Patent Infringement (the “Complaint”) of Plaintiffs/Counterclaim Defendants IP Innovation and Technology Licensing Corp. (collectively “Plaintiffs”), as follows:

1. Novell admits that the Complaint purports to allege claims for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). Novell denies any remaining allegations set forth in paragraph 1 of the Complaint, including any explicit or implied allegations of infringement.

2. Novell is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Complaint and, therefore, denies each and every allegation of paragraph 2 of the Complaint.

3. Novell is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint and, therefore, denies each and every allegation of paragraph 3 of the Complaint.

4. Novell admits that United States Patent No. 5,072,412 (“the ‘412 patent”) is entitled “User Interface With Multiple Workspaces for Sharing Display System Objects,” that the ‘412 patent states on its face that it issued on December 10, 1991, and that a copy of the ‘412 patent was attached to the Complaint as Exhibit A. Novell denies that the ‘412 patent was duly and lawfully issued. Novell admits that United States Patent No. 5,533,183 (“the ‘183 patent”) is entitled “User Interface With Multiple Workspaces for Sharing Display System Objects,” that the ‘183 patent states on its face that it issued on July 2, 1996, and that a copy of the ‘183 patent was attached to the Complaint as Exhibit B. Novell denies that the ‘183 patent was duly and lawfully issued. Novell admits that United States Patent No. 5,394,521 (“the ‘521 patent”) is entitled “User Interface With Multiple Workspaces for Sharing Display System Objects,” that the ‘521 patent states on its face that it issued on February 28, 1995, and that a copy of the ‘521 patent was attached to the Complaint as Exhibit C. Novell denies that the ‘521 patent was duly and lawfully issued. Novell lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 4 of the Complaint, and therefore denies those remaining allegations.

5. Novell is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint and, therefore, denies each and every allegation of paragraph 5 of the Complaint.

6. Novell admits the allegations of Paragraph 6 of the Complaint.

7. Novell admits that it transacts business in this judicial district. Novell denies all remaining allegations set forth in paragraph 7 of the Complaint, including any explicit or implied allegations of infringement, insofar that those allegations apply to it. Novell is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint as they relate to the Red Hat, Inc. and therefore, denies the same.

8. Novell admits that venue is proper in this judicial district, but denies the legal sufficiency of Plaintiff's claims and allegations. With respect to Red Hat, Inc., Novell lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint, and therefore denies these allegations.

9. Novell denies each and every allegation of paragraph 9 of the Complaint insofar as its relates to Novell. With respect to Red Hat, Inc., Novell lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint, and therefore denies the same.

10. Novell denies each and every allegation of paragraph 10 of the Complaint insofar as its relates to Novell. With respect to Red Hat, Inc., Novell lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint, and therefore denies the same.

11. Novell denies each and every allegation of paragraph 11 of the Complaint insofar as its relates to Novell. With respect to Red Hat, Inc., Novell lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, and therefore denies the same.

12. Novell denies each and every allegation of paragraph 12 of the Complaint insofar as its relates to Novell. With respect to Red Hat, Inc., Novell lacks sufficient knowledge and

information to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint, and therefore denies the same.

13. Novell denies that it had notice of the '412 patent, the '183 patent, or the '521 patent prior to the filing of the Complaint. With respect to Red Hat, Inc., Novell lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, and therefore denies the same.

14. Novell denies each and every allegation of paragraph 14 of the Complaint insofar as it relates to Novell. With respect to Red Hat, Inc., Novell lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint, and therefore denies the same.

DEFENSES

15. Further answering the Complaint and as additional defenses thereto, Novell asserts the following defenses. In doing so, Novell does not assume the burden of proof with respect to those related matters that, pursuant to law, Plaintiffs bears the burden.

FIRST DEFENSE

16. Novell has not infringed and does not presently infringe, either willfully or otherwise, the '412 patent, the '183 patent, or the '521 patent (collectively the "Patents-in-Suit") either literally or by application of the doctrine-of-equivalents.

SECOND DEFENSE

17. One or more claims of the Patents-in-Suit are invalid for failure to satisfy one or more of the requirements of the Patent Act, 35 U.S.C. § 1, *et seq.*, including, but not limited to, the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103, and 112.

THIRD DEFENSE

18. Prosecution history estoppel applies to preclude Plaintiffs from maintaining that any claim of the Patents-in-Suit cover any of Novell's accused offerings.

FOURTH DEFENSE

19. Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

FIFTH DEFENSE

20. Plaintiffs' claims are barred in whole or in part by the doctrine of equitable estoppel.

SIXTH DEFENSE

21. To the extent Plaintiffs seek damages for alleged infringement more than six years prior to the filing of this action, the claims are barred by the statute of limitations pursuant to 35 U.S.C. § 286.

SEVENTH DEFENSE

22. To the extent Plaintiffs seek damages for any alleged infringement prior to its giving actual notice of the patents in suit to Novell, its claims are barred pursuant to 35 U.S.C. § 287(a).

EIGHTH DEFENSE

23. Plaintiffs are not entitled to any injunctive relief because any alleged injury to Plaintiffs is not immediate or irreparable, Plaintiffs have an adequate remedy at law for any alleged injury, and there is a compelling public interest in allowing Novell to continue to make, sell, offer to sell, and distribute its software offerings.

NINTH DEFENSE

24. Plaintiffs have failed to state a claim upon which relief may be granted.

RESPONSE TO REQUEST FOR RELIEF

25. Novell denies that Plaintiffs are entitled to the relief sought in the Complaint, in addition to any other relief.

COUNTERCLAIMS

26. Counterclaim Plaintiff Novell, Inc. (“Novell”) is a Delaware Corporation with its principal place of business at 404 Wyman St., Suite 500, Waltham, MA 02451.

27. Counterclaim Defendant IP Innovation L.L.C. (“IPI”) claims to be a Texas limited liability company with a place of business at 707 Skokie Boulevard, Suite 600, Northbrook, IL 60062.

28. Counterclaim Defendant Technology Licensing Corporation (“TLC”) claims to be a Nevada corporation with a principal place of business at 1000 E. William Street, Suite 204, Carson City, Nevada 89701.

29. This Court has subject matter jurisdiction over this Counterclaim arising under the Patent Act pursuant to 28 U.S.C. §§ 1331 and 1338 and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2201.

30. By virtue of having filed this action in this Court, Counterclaim Defendants IPI and TLC have consented to personal jurisdiction.

31. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c).

**DECLARATORY JUDGMENT FOR INVALIDITY,
UNENFORCEABILITY, AND NON-INFRINGEMENT OF
UNITED STATES PATENT NOS. 5,072,412; 5,533,183; AND 3,394,521**

29. Novell incorporates by reference Paragraphs 26 through 31 as though fully set forth herein.

30. IPI and TLC claim to own the right, title, and interest in and have standing to sue for infringement of U.S. Patent Nos. 5,072,412; 5,533,183; and 5,394,521 (the “Patents-in-Suit”).

31. On October 9, 2007, IPI and TLC commenced this action by filing a complaint in this Court, seeking enforcement of the Patents-in-Suit against Red Hat, Inc. and Novell and alleging that various Novell offerings infringe the claims of the Patents-in-Suit.

32. Novell has denied IPI’s and TLC’s claims of infringement for each of the Patents-in-Suit and asserts that the Patents-in-Suit are invalid and unenforceable.

33. A substantial, actual, and continuing controversy now exists between IPI and TLC on the one hand, and Novell, on the other hand, regarding the alleged infringement, validity, and enforceability of the Patents-in-Suit by virtue of IPI’s and TLC’s allegations of infringement.

34. Novell has not infringed and does not presently infringe, either willfully or otherwise, of any of the Patents-in-Suit either literally or by application of the doctrine-of-equivalents.

35. The Patents-in-Suit are invalid and/or unenforceable for failure to meet requirements of Title 35 of the United States Code.

36. Novell is entitled to a declaration that the Patents-in-Suit are not infringed by Novell and are invalid and/or unenforceable.

37. This is an exceptional case pursuant to 35 U.S.C. § 285, entitling Novell to an award of its attorneys’ fees.

PRAYER FOR RELIEF

WHEREFORE, DEFENDANT AND COUNTERCLAIMANT NOVELL prays as follows:

A. That the Complaint be dismissed in its entirety with prejudice and that a Judgment be entered for Novell;

B. That Plaintiffs take nothing by reason of their Complaint;

C. For a declaratory judgment that:

1. Novell does not infringe either directly or indirectly any valid and enforceable claim of the Patents-in-Suit;
2. The Patents-in-Suit are invalid and void;
3. The Patents-in-Suit are unenforceable; and
4. Plaintiffs, their officers, servants, employees, agents, and attorneys, and all those in concert or participation with them, are without right or authority to threaten or maintain suit against Novell, its present or prospective customers, agents, servants, or employees, or users of Novell's products, for alleged infringement of the Patents-in-Suit;

D. For an injunction prohibiting Plaintiffs, their officers, servants, employees, agents, and attorneys, and all those in concert or participation with them who receive actual notice of the injunction, from initiating infringement litigation against and from threatening Novell, its present or prospective customers, agents, servants, or employees, or users of Novell's products, with infringement litigation or charging any of them either orally or in writing with infringement of the Patents-in-Suit, or representing to any of them that infringement has occurred, because of the manufacture, use, sale, or offer for sale of any Novell offering;

E. That Novell be awarded under 35 U.S.C. § 285 its attorneys' fees and costs of suit incurred in this litigation, as Plaintiffs' conduct as set forth above renders this an exceptional case; and

F. For such other relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Novell respectfully demands a trial by jury on all issues so triable.

DATED: February 1, 2008

Respectfully submitted,

/s/ Mark N. Reiter

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**ATTORNEYS FOR DEFENDANT
NOVELL, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 1, 2008 all counsel of record were served with a copy **DEFENDANT/COUNTERCLAIM PLAINTIFF NOVELL, INC.'S ANSWER, DEFENSES, AND COUNTERCLAIMS TO PLAINTIFFS COMPLAINT FOR PATENT INFRINGEMENT** by the Court's CM/ECF system per Local Rule CV-5(a)(3).

Dated: February 1, 2008

/ s/ Angela Wilkins
Angela Wilkins