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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

NOVELL, INC.,

Plaintiff,

-v-

MICROSOFT CORPORATION,

Defendant.

**MICROSOFT'S MOTION
PURSUANT TO LOCAL RULE 7-1(e)
FOR LEAVE TO FILE AN
OVERSIZED MEMORANDUM
IN SUPPORT OF MICROSOFT'S
MOTION TO DISMISS
NOVELL'S COMPLAINT**

Civil No. 2:04 CV 1045 TS
Judge Ted Stewart

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Local Rule 7-1(b)(3) of this Court provides that the Argument section of a memorandum supporting or opposing a motion to dismiss must not exceed ten (10) pages. Local Rule 7-1(e), however, permits parties to seek leave of court to file a longer Argument section.

Microsoft Corporation hereby seeks leave of this Court, pursuant to Local Rule 7-1(e), to file a memorandum in support of its Motion to Dismiss Novell's Complaint with an Argument section not to exceed nineteen (19) pages.¹ Microsoft states the following in support of its request for leave:

1. Novell's Complaint contains approximately 180 paragraphs and is 68 pages long. Microsoft is moving to dismiss all six counts of the Complaint. To address adequately the legal issues, Microsoft requires more than Local Rule 7-1(b)(3) would otherwise permit.
2. Novell's Complaint alleges that Novell suffered over \$1.2 billion in actual damages as a result of alleged antitrust violations committed by Microsoft. (Novell's Complaint ¶ 150.) Novell further alleges that if it proves its claims, Microsoft will be liable for three times the amount of Novell's actual damages, plus interest, costs, and attorney fees. (*Id.*, Prayer for Relief ¶¶ 2, 3.) With so much at stake, Microsoft believes that it should be permitted the requested number of pages to advance its arguments in support of the Motion to Dismiss.
3. This action may soon be transferred to the United States District Court for the District of Maryland by the Judicial Panel on Multidistrict Litigation

¹ The length of the entire memorandum will not exceed thirty-three (33) pages.

(the “Panel”), which issued a conditional transfer order on December 14, 2004. The Local Rules of the District of Maryland allow memoranda in support of motions to dismiss to be fifty (50) pages, exclusive of (a) affidavits and exhibits, (b) tables of contents and citations, and (c) addenda containing statutes, rules, regulations and similar material. D. Md. R. 105.3.²

The conditional transfer order was issued after Novell filed a “Notice of Potential ‘Tag-Along’ Action” with the Panel, notifying the Panel that its lawsuit “shares common questions of fact with other private antitrust actions” against Microsoft, and that the “Panel has transferred such actions to the United States District Court for the District of Maryland for coordinated and/or consolidated pre-trial proceedings pursuant to 28 U.S.C. § 1407.” On November 30, 2004, Microsoft filed its own “Notice of Potential ‘Tag-Along’ Action” with the Panel, agreeing that transfer to the District of Maryland was appropriate.

On December 29, 2004, in a change of position, Novell notified the Panel that it opposed transfer (without indicating the reasons for its position) and would be moving to vacate the conditional transfer order.

Transfer in the near future remains a distinct possibility. Pursuant to 28 U.S.C. § 1407, the Panel may transfer “civil actions involving one or

² A copy of the relevant section of the Local Rules for the District of Maryland is submitted herewith as Exhibit A.

more common questions of fact [that] are pending in different districts.”³

Id. Both parties agree that this action shares “common questions of fact” with actions previously transferred to the District of Maryland. Novell’s motion to vacate the conditional transfer order should be fully briefed with the Panel by February 8, 2005. Microsoft’s Motion to Dismiss, on the other hand, will not be fully briefed until March 10, 2005.

³ In conformance with Local Rule 3-3 of this Court, which requires attorneys in cases “that may be subject to pretrial proceedings before the Judicial Panel on Multidistrict Litigation” to submit the “titles and case numbers of all other related cases filed in this or any other jurisdiction,” Microsoft is submitting herewith as Exhibit B a table of such cases.

CONCLUSION

For the foregoing reasons, Microsoft requests that this Court grant its Motion Pursuant to Local Rule 7-1(e) for Leave to File an Oversized Memorandum in Support of Microsoft's Motion to Dismiss Novell's Complaint.

Dated: January 5, 2005

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2005, I caused a true and correct copy of the foregoing to be served upon the following by facsimile and overnight mail:

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Exhibits/
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