

EXHIBIT 9

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

--00000--

NOVELL, INC., a Delaware
corporation,

Plaintiff,

vs.

THE CANOPY GROUP, INC., a
Utah corporation,

Defendant.

Civil No. 000402011c
Division No.

DEPOSITION OF:
STEVE BENTLEY

--00000--

COPY

Deposition of STEVE BENTLEY, taken on behalf of
Defendant, at the law offices of Jeffs & Jeffs, 90
North 100 East, Provo, Utah, on July 18, 2001,
commencing at 8:55 a.m., before TIFFANY STEPHENS,
Certified Shorthand Reporter, Registered Professional
Reporter and Notary Public in and for the State of
Utah, pursuant to Notice.



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A P P E A R A N C E S

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ALSO PRESENT:
Ralph Yarro

I N D E X

WITNESS	EXAMINATION BY	PAGE
Steve Bentley	Mr. Palumbo	4

1 Novell DOS product and its corresponding non-royalty
2 bearing components, including source code,
3 documentation, trademarks, legal rights, among other
4 things but excluding Personal NetWare and associated
5 technologies, for \$500,000." Were you present at any
6 meetings with Caldera representatives during which
7 they proposed a purchase price of \$500,000?

8 A. I may have been. I don't recall specifics
9 of meetings -- of specific meetings.

10 Q. I'm handing you Exhibit 36, bearing the
11 production number NOV-23-002048. If you could
12 identify this document for the record, please.

13 A. It appears to be an E-mail from David
14 Bradford to myself on May 24th '96.

15 Q. Mr. Bradford starts off by saying, "I have
16 the okay from the Novell Board of Directors to proceed
17 and sell the Novell DOS business." Do you recall,
18 around the end of May 1996, the Board gave you the
19 go-ahead to sell the Novell DOS business?

20 A. Apparently so. The go-ahead would have gone
21 to Bradford and not to me.

22 Q. Okay. Mr. Bradford goes on to explain to
23 you, "The Board indicated that they would like to
24 receive good value for the business but have declined
25 any scenario under which Novell shares any of the

1 proceeds of a lawsuit." Did you have any direct
2 discussions with Mr. Bradford regarding the Board's
3 decision in that respect?

4 A. Again, I don't recall specifics, but I do
5 believe that we discussed this E-mail and how we were
6 to proceed in pursuing discussions with Caldera.

7 Q. What was your understanding of the Board's
8 decision to the effect that the Board was declining a
9 scenario under which Novell shares any of the proceeds
10 of a lawsuit?

11 A. This continuing concern about Novell being
12 perceived as directly being involved in the lawsuit,
13 and so those were the marching orders, that we needed
14 to avoid that perception.

15 Q. And does that mean that the Board declined a
16 situation where the documents would provide that
17 Novell was to receive a percentage of the proceeds of
18 a lawsuit?

19 MR. MULLEN: Objection, assumes facts not in
20 evidence, lacks foundation, seeks speculation.

21 BY MR. PALUMBO:

22 Q. I'm just asking about your understanding of
23 what scenario the Board would -- had declined.

24 MR. MULLEN: Same objection and asked and
25 answered. Go ahead.

1 shareholder derivative actions for wasting corporate
2 assets (indeed, 2 inquiries have been received to that
3 effect). Further, a lack of prosecution rewards
4 Microsoft for continuing its path of disregard for the
5 legal and business rights of other parties." The
6 question is, was it -- given these concerns, was it
7 Novell's expectation that Caldera would, in fact,
8 bring a private antitrust case against Microsoft?

9 MR. MULLEN: Would you read that back,
10 please?

11 (Pending question read back.)

12 MR. MULLEN: Lacks foundation. You may
13 answer.

14 THE WITNESS: Caldera, as I stated a minute
15 ago, represented to us that they were ready, willing,
16 and were planning on prosecuting this lawsuit. It was
17 at least partially for that reason that they were the
18 party that we were interested in pursuing this
19 transaction with.

20 BY MR. PALUMBO:

21 Q. From Novell's standpoint, given your
22 concerns about shareholder derivative actions, was it
23 important as part of this sale of the DOS assets that
24 Caldera actually bring the lawsuit against Microsoft?

25 A. It was important to us that whoever we did

1 this deal with was at least representing or appeared
2 committed to do it. It was not something we felt we
3 could control, but it was a basis for selecting them
4 as a party with whom to complete this transaction.

5 Q. Why didn't you feel you could control it?

6 MR. MULLEN: Why did you feel could or
7 couldn't?

8 BY MR. PALUMBO:

9 Q. Why didn't you feel you could control it?

10 A. Because we did not want to have a direct
11 involvement. If we are controlling the lawsuit or
12 controlling the entity that brings the lawsuit, that's
13 the direction we did not want to go.

14 Q. Under the -- again, on the second page,
15 under the "Alternatives Not Selected," in the third
16 paragraph, you say, "The suit" -- I take it that's the
17 Microsoft suit, correct?

18 A. Yes.

19 Q. "The suit could be ignored or transferred
20 without any participation by Novell, but that would
21 leave a very significant asset unexploited by Novell
22 shareholders and potentially lead to shareholder suits
23 against Novell management." Again, was that -- did
24 that reflect a -- strike that. In writing this, did
25 you have the expectation that Caldera would bring the

1 to, again, distance Novell somewhat by incorporating
2 in this Cross Platform License Agreement that Caldera
3 had expressed interest in pursuing with other
4 technologies. So it seemed a better vehicle, rather
5 than putting it into an Asset Purchase Agreement,
6 putting it in with a more standard or typical OEM
7 product technology licensing agreement.

8 Q. Which would have more effect? I'm sorry.

9 A. Obfuscation on the part of Microsoft or the
10 outside world, not obfuscation between the parties.

11 (Exhibit No. 52 marked for identification.)

12 BY MR. PALUMBO:

13 Q. The reporter has handed you Exhibit 52. It
14 bears the production numbers NOV-23-001172 through
15 1188. It is an Asset Purchase Agreement between
16 Novell and Caldera. It also bears the stamp,
17 "Revision No. 1, marked to show changes from version
18 dated 6/7/96," which is the same stamp as was on
19 Exhibit 51. The difference here, I believe -- and you
20 can look at this yourself -- is that there are
21 additional comments, and it bears a line at the top
22 indicating a fax either to or from Blackburn & Stoll
23 on June 19, 1998. My question is whether you've seen
24 this before, and please tell us if you disagree with
25 my characterization of the document.

1 A. Just from looking at it, it appears to be
2 the exact same as Exhibit 50.

3 Q. If you'll look at Page 13, which bears the
4 designation number NOV-23-001183, do you know whose
5 handwriting appears at the bottom of the page?

6 A. I don't recognize it.

7 Q. And if you'll look at the very last page of
8 the exhibit, which bears handwritten notes, do you
9 know whose handwriting appears on that page, which is
10 designated as 001188?

11 A. That's my handwriting.

12 Q. Can you explain to the jury what the meaning
13 of these various entries were, if you recall? I'm
14 going to strike that. Could you explain to the jury
15 what you were -- what your purpose in writing -- or
16 what you were thinking when you made the entry "suit
17 timing"?

18 A. I don't recall exactly what that was, but I
19 do remember we had a concern that we were approaching
20 the statute of limitations, and it was important to us
21 to know if Caldera was planning on doing something or
22 not.

23 Q. Could you explain to the jury what the
24 statute of limitations concern was for the benefit of
25 those people in the jury who are not lawyers?