

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

This Document Relates to:
Novell, Inc. v. Microsoft Corporation,
Civil Action No. JFM-05-1087

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) MDL Docket No. 1332
) Hon. J. Frederick Motz
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**AFFIDAVIT OF ALEX HASSID
IN SUPPORT OF NOVELL'S RENEWED MOTION FOR
SUMMARY JUDGMENT ON MICROSOFT'S AFFIRMATIVE DEFENSES**

ALEX HASSID, being duly sworn, deposes and says:

1. I am a member of the bar of the State of New York and the District of Columbia, as well as the United States Court of Appeals for the First Circuit. I am an associate of the law firm of Dickstein Shapiro LLP, attorneys for plaintiff Novell, Inc. ("Novell") in the above-captioned matter.

2. I submit this affidavit in support of Novell's Renewed Motion for Summary Judgment on Microsoft's Affirmative Defenses. I have personal knowledge of the facts set forth herein, and, if called upon to do so, would competently testify thereto.

3. Any document listed below bearing a Bates stamp beginning "NOV" was produced by Novell in this action.

4. Any document listed below bearing a Bates stamp beginning "MS-PCA" was produced by Microsoft.

5. Attached as **Exhibit 1** pursuant to Local Rule 105.5(a) is a copy of the case *Joplin Enters. v. Allen*, No. C91-1035C, 1992 U.S. Dist. LEXIS 20762 (W.D. Wash. Dec. 15, 1992).

6. Attached as **Exhibit 2** pursuant to Local Rule 105.5(a) is a copy of the case *KKSN, Inc. v. Rogers*, No. 92-1611-FR, 1993 U.S. Dist. LEXIS 7059 (D. Or. May 25, 1993).

7. Attached as **Exhibit 3** is a true and correct copy of the Stipulation & Final Judgment (attached thereto) in *United States v. Microsoft Corp.* (D.D.C. July 15, 1994), Bates stamped NOV00128108-24.

8. Attached as **Exhibit 4** is a true and correct copy of the Complaint, *Microsoft*, (July 15, 1994) and Bates stamped NOV00128092-107.

9. Attached as **Exhibit 5** is a true and correct copy of the Complaint in *Caldera, Inc. v. Microsoft Corp.* (“*Caldera*”), (D. Utah July 23, 1996), Bates stamped NOV00125439-67.

10. Attached as **Exhibit 6** is a true and correct copy of the cited portions of the deposition of David Bradford (Novell) in the action *Novell, Inc. v. Canopy Group, Inc.* (“*Canopy Group*”), (4th Jud. Dist. Ct. Utah County July 17, 2001), Bates stamped NOV00112266-319.

11. Attached as **Exhibit 7** is a true and correct copy of an e-mail between Steve Bentley and David Bradford (Dec. 8, 1995), Bates stamped NOV00129133-34.

12. Attached as **Exhibit 8** is a true and correct copy of the Meeting Minutes of Novell’s Board of Directors (May 23, 1996), Bates stamped NOV00119903-05.

13. Attached as **Exhibit 9** is a true and correct copy of the cited portions of the deposition of Steve Bentley (Novell), *Canopy Group* (July 18, 2001), Bates stamped NOV00132632-782.

14. Attached as **Exhibit 10** is a true and correct copy of a Novell Press Release (Oct. 30, 1995), Bates stamped NOV 00002317.

15. Attached as **Exhibit 11** is a true and correct copy of a Novell Press Release (Jan. 31, 1996), Bates stamped NOV 00002297-98.

16. Attached as **Exhibit 12** is a true and correct copy of the cited portions of the deposition of Bryan Wayne Sparks (Caldera/Canopy Group), *Canopy Group* (July 10, 2001), Bates stamped NOV00120424-657.

17. Attached as **Exhibit 13** is a true and correct copy of the Asset Purchase Agreement between Novell and Caldera (effective date July 23, 1996), Bates stamped NOV00728312-54. For the Court's convenience, we have appended a single page, Bates stamped NOV00126012, to show language that is partially obscured in the version cited at Bates stamp NOV00728316.

18. Attached as **Exhibit 14** is a true and correct copy of the Novell Cross Platform Services and Novell Products Source Code License Agreement between Novell and Caldera (July 23, 1996), Bates stamped NOV00127864-915.

19. Attached as **Exhibit 15** is a true and correct copy of the Deposition of Ralph Yarro (Caldera/Canopy Group), *Canopy Group*, (Sept. 26, 2001), Bates stamped NOV00121175-245.

20. Attached as **Exhibit 16** is a true and correct copy of Caldera's First Amended Complaint, *Caldera* (Feb. 12, 1998), Bates stamped MS-PCA 1125082-116.

21. Attached as **Exhibit 17** is a true and correct copy of Defendant's Reply Memorandum in Opposition to Novell's Motion to Intervene and in Support of Its Expedited Motion to Compel, *Caldera* (July 14, 1998), Bates stamped MS-PCA 1126267-77.

22. Attached as **Exhibit 18** is a true and correct copy of Defendants Motion to Compel Production of Documents Withheld Based on Alleged Attorney Work Product Protection, *Caldera* (June 12, 1998), Bates stamped MS-PCA 1125725-28.

23. Attached as **Exhibit 19** is a true and correct copy of the Motion to Intervene, *Caldera* (July 3, 1998), Bates stamped MS-PCA 1126129-31.

24. Attached as **Exhibit 20** is a true and correct copy of the Hearing Transcript, *Caldera* (July 16, 1998), Bates stamped NOV00106687-99.
25. Attached as **Exhibit 21** is a true and correct copy of Defendant's Supplemental Memorandum in Opposition to Novell's Motion to Intervene, *Caldera* (July 24, 1998), Bates stamped NOV 00668507-16.
26. Attached as **Exhibit 22** is a true and correct copy of the Joint Supplemental Memorandum of Caldera and Novell in Support of Novell's Motion to Intervene, *Caldera* (July 21, 1998), Bates stamped NOV 00668517-27.
27. Attached as **Exhibit 23** is a true and correct copy of the Order, *Caldera* (July 28, 1998), Bates stamped NOV 00668500-06.
28. Attached as **Exhibit 24** is a true and correct copy of the Settlement Agreement between Caldera and Microsoft, *Caldera* (Jan. 7, 2000), Bates stamped NOV00114048-58.
29. Attached as **Exhibit 25** is a true and correct copy of Microsoft's Responses and Objections to Novell's First Set of Interrogatories and Document Requests in this case (June 16, 2008).
30. Attached as **Exhibit 26** pursuant to Local Rule 105.5(a) is a copy of *Adams v. Gen. Accident Assurance Co. of Can.*, Nos. 96-4190, 96-4195, 1997 U.S. App. LEXIS 36400, at *13 (10th Cir. Dec. 30, 1997).
31. Attached as **Exhibit 27** is a true and correct copy of the Draft Asset Purchase Agreement between Novell and Caldera (May 31, 1996), Bates stamped NOV00107325-342.
32. Attached as **Exhibit 28** is a true and correct copy of the cited portions of the deposition of Ransom H. Love (Caldera/Canopy), *Canopy Group* (Aug. 1, 2001), Bates stamped NOV00121980-2052.

33. Attached as **Exhibit 29** is a true and correct copy of the Draft of the Asset Purchase Agreement between Novell and Caldera (Revision 1, June 1996), Bates stamped NOV00108420-36.

34. Attached as **Exhibit 30** is a true and correct copy of the cited portions of the deposition of Craig Christensen (Novell), *Canopy Group* (Mar. 15, 2002), Bates stamped NOV00133699-750.

35. Attached as **Exhibit 31** is a true and correct copy of the Declaration of Stephen J. Hill, *Canopy Group* (May 2, 2002), Bates stamped NOV00116692-701.

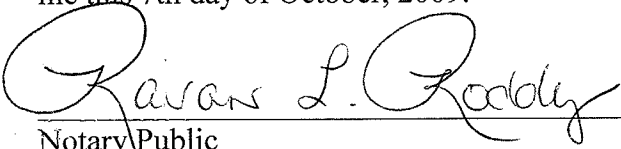
36. Attached as **Exhibit 32** is a true and correct copy of the cited portions of the deposition of Robert Frankenberg in this case (Mar. 25, 2009).

37. Attached as **Exhibit 33** is a true and correct copy of the Complaint, *United States v. Microsoft Corp.* (D.D.C. May 18, 1998), Bates stamped NOV 00636675-728.



Alex Hassid

SUBSCRIBED AND SWORN to before
me this 7th day of October, 2009.



Notary Public

RAVAN L. RODDY
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires April 30, 2014