

EXHIBIT 6

1 IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
 2 STATE OF UTAH
 3 --0000--

4 NOVELL, INC., a Delaware
 5 corporation,
 6 Plaintiff, Civil No. 000402011C
 7 vs. Division No.
 8 THE CANOPY GROUP, INC., a
 9 Utah corporation, DEPOSITION OF:
 10 Defendant. DAVID BRADFORD

11 --0000--
 12
 13
 14 Deposition of DAVID BRADFORD, taken on behalf of
 15 Defendant, at the law offices of Jeffs & Jeffs, 90
 16 North 100 East, Provo, Utah, on July 17, 2001,
 17 commencing at 9:02 a.m., before TIFFANY STEPHENS,
 18 Certified Shorthand Reporter, Registered Professional
 19 Reporter and Notary Public in and for the State of
 20 Utah, pursuant to Rule 35.

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1 to Novell's Board of Directors about the consideration
 2 that Novell should receive from the sale of its DOS
 3 assets, including consideration attributable to
 4 Novell's cause of action against Microsoft?
 5 A. I don't know that I made formal
 6 recommendations. I recall a Board Meeting in which I
 7 presented the Novell Board with the opportunity saying
 8 it could be worth a billion plus. I recall the Novell
 9 Board analyzing whether or not they wanted Novell,
 10 Inc. to be taking that cause of action against
 11 Microsoft, and the Board of Directors of Novell
 12 decided against doing that.
 13 Q. Okay. So, in your capacity as head of
 14 Corporate and Business Development, you did make
 15 reports and have discussions with the Novell Board
 16 about the purchase price that Novell might receive if
 17 it sold DOS assets, including Novell's cause of action
 18 against Microsoft?
 19 A. Can you be a little more specific on that?
 20 MR. PALUMBO: Why don't you read it back,
 21 and let me see if I can be more specific.
 22 (Pending question read back.)
 23 THE WITNESS: I would say, at the time, I
 24 was acting as more of a purveyor of information. I
 25 was acting also in my capacity as Corporate Secretary

25

1 Counsel?
 2 MR. PALUMBO: As head of Business and
 3 Corporate Development.
 4 THE WITNESS: Could you repeat the question
 5 then or read it back?
 6 BY MR. PALUMBO:
 7 Q. I'll just repeat it. As head of Corporate
 8 and Business Development, did you advise
 9 Mr. Frankenberg regarding the terms pursuant to which
 10 Novell would sell DOS assets to Caldera?
 11 A. I don't recall whether it was myself or
 12 Steve Bentley that conveyed those terms to Bob.
 13 Q. Okay. Did you and Mr. Bentley discuss the
 14 terms pursuant to which Novell would sell DOS assets
 15 to Caldera? Again, I'm talking about in your capacity
 16 as head of Corporate and Business Development.
 17 A. Certainly.
 18 Q. Did you, at any time, advise Mr. Frankenberg
 19 or the Board, again, as head of Corporate and Business
 20 Development, that you felt it would be beneficial to
 21 Novell if Novell brought a private antitrust cause of
 22 action against Microsoft?
 23 A. Can you repeat the question?
 24 (Pending question read back.)
 25 THE WITNESS: Let's go off the record for a

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1 and General Counsel to supply information to the
 2 Novell Board. I remember getting that letter or
 3 E-mail from Steve Hill outlining what he felt the
 4 lawsuit was worth and then providing that.
 5 BY MR. PALUMBO:
 6 Q. So you passed that information on to the
 7 Board?
 8 A. Right, as I recall.
 9 Q. In your capacity as head of Corporate and
 10 Business Development, did you evaluate the various
 11 potential purchasers of DOS assets in order to
 12 determine which of those purchasers you thought might
 13 be Novell's best option?
 14 A. Yes.
 15 Q. Okay. And did you make the determination
 16 personally, as head of Corporate and Business
 17 Development, that Novell's best option was to sell DOS
 18 assets to Caldera?
 19 A. I supplied that recommendation to Bob
 20 Frankenberg along with Steve Bentley.
 21 Q. Okay. Did you advise Mr. Frankenberg or the
 22 Board regarding any of the terms of sale of DOS assets
 23 to Caldera?
 24 MR. MULLEN: Objection. You mean as head of
 25 Business and Corporate Development, not as General

26

1 little bit. Can we do that?
 2 BY MR. PALUMBO:
 3 Q. I'd like to get an answer before we go off
 4 the record.
 5 MR. MULLEN: I'll object. The question is
 6 vague. Do you understand it?
 7 THE WITNESS: Well, I was acting at the time
 8 with respect to the Board of Directors, certainly, in
 9 my capacity as General Counsel, and when -- you have
 10 made a number of statements in my capacity as head of
 11 Business and Corporate Development. I want to be
 12 clear on that function and that role. While the
 13 Business Development function reported to me, I was
 14 not necessarily making final decisions in my capacity
 15 as head of Corporate and Business Development. When I
 16 was working with the Board of Directors in my capacity
 17 as secretary to the Board, General Counsel, etcetera,
 18 I certainly had some opinions that I would have shared
 19 at the time with the Board of Directors on the subject
 20 matter of the Novell DOS assets and their value.
 21 MR. MULLEN: Can we take a break now?
 22 MR. PALUMBO: Yeah.
 23 (A recess was taken.)
 24 BY MR. PALUMBO:
 25 Q. Could you tell the ladies and gentlemen of

28

1 the jury why Novell's Board decided not to bring a
2 private antitrust case against Microsoft?
3 A. My recollection is that there were a number
4 of reasons, one of them certainly related to the fact
5 that they didn't -- did not want Novell, Inc. to
6 appear as a direct plaintiff against Microsoft, to be
7 in direct litigation with Microsoft. Their concern
8 was that customers felt that if Novell and Microsoft
9 were in direct litigation, that when it came to
10 product decisions, it might tip them over to buy
11 Microsoft products rather than Novell products, so
12 there was a customer concern.
13 Q. Was that because it was important for
14 Novell's customers to have networking software that
15 was compatible with Microsoft's Windows operating
16 system software?
17 A. Yes.
18 Q. And the concern was that if Novell was a
19 direct plaintiff in a private antitrust action against
20 Microsoft, Novell's customers would fear that Novell
21 products might not be compatible with their desktop
22 operating system?
23 A. Yes, i.e., that Microsoft may begin
24 withholding technical information from Novell, which
25 would create incompatibilities between Novell's

29

1 The first concern was about actual retaliation by
2 Microsoft against Novell; second, customer perception,
3 that Novell products might not be compatible with
4 Microsoft products in the future; and, third, investor
5 perception?
6 A. As I recall, those were the three reasons.
7 I suspect another reason may have been, at the time,
8 what a private antitrust action might take, and the
9 impact it might have on the day-to-day working efforts
10 of the employees and Chairman and CEO and etcetera.
11 Q. So just the time and distraction to Novell's
12 executives and senior executives if Novell was to
13 become involved in a private antitrust case against
14 Microsoft. That's four reasons?
15 A. That's correct.
16 Q. At the time that Novell decided to sell DOS
17 assets, including the private antitrust case against
18 Microsoft, was Novell also concerned that if it
19 retained any financial interest in that litigation
20 that there could be adverse results to Novell?
21 A. I would say that was a minimal concern.
22 Q. Did Novell ever consider simply not selling
23 the claim and not bringing the claim?
24 A. Not that I recall.
25 Q. Do you recall that Novell's Officers or

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1 NetWare operating system and other Novell products and
2 Microsoft products.
3 Q. So one of the -- so, a second concern, that
4 Microsoft would actually retaliate against Novell in
5 some way and withhold technical information that would
6 make it more difficult for Novell to produce software
7 products that were compatible with Microsoft's desktop
8 operating system?
9 A. Yes.
10 Q. Was there also a concern that investors and
11 potential investors in Novell's public stock would
12 value -- or would reduce the valuation if Novell
13 brought a private antitrust action against Microsoft?
14 A. Yes.
15 Q. Did the Board ever have any discussion or
16 make any determination as to what loss in stock value
17 could result if Novell brought a private antitrust
18 action against Microsoft?
19 A. I recall that there were conversations on
20 the subject, but I don't recall any specific numbers
21 that they felt the company's stock would be reduced by
22 as a result of a direct antitrust action.
23 Q. So, if I understand you correctly, Novell's
24 Board decided not to bring a private antitrust case
25 against Microsoft for, essentially, three reasons.

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1 Board were concerned that if Novell didn't get some
2 value for its private antitrust action against
3 Microsoft that a Novell shareholder or shareholders
4 might bring a cause of action or raise an issue with
5 Novell's Officers and Directors with respect to
6 wasting that corporate asset?
7 A. Yes. That was a concern.
8 Q. So the concern was that if Novell didn't get
9 some value out of this billion-dollar-plus private
10 cause of action that shareholders might bring a
11 lawsuit for waste of corporate assets?
12 A. You're being quite specific, but, in
13 general, yes. There was a concern. We didn't want to
14 waste a corporate asset.
15 Q. So, in determining to sell DOS assets,
16 including the private cause of action against
17 Microsoft, the Novell Board expected to get value both
18 for the ongoing DOS business licensing and other
19 revenues and for the Microsoft cause of action?
20 A. Yes.
21 Q. I take it from the prior answer that
22 Novell's Board believed that if it sold the Microsoft
23 cause of action to someone else, and that person
24 brought the lawsuit against Microsoft, the potential
25 damages to Novell from Microsoft, retaliation,

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1 lawsuit against Microsoft is mentioned expressly in
 2 the Asset Purchase Agreement between Novell and
 3 Caldera or the Cross Platform License Agreement?
 4 A. I don't think the specific private antitrust
 5 lawsuit is mentioned. Certainly there's references to
 6 the causes of action, settlements, rewards, those
 7 sorts of things.
 8 Q. So, to the best of your recollection, you've
 9 never see the word "Microsoft" in any of the -- either
 10 in the Asset Purchase Agreement or the Cross Platform
 11 License Agreement, right?
 12 A. Right. I doubt it.
 13 Q. Do you remember whether there's a specific
 14 reference to a private antitrust case?
 15 A. I don't think there are words, quote,
 16 private antitrust case in the documents.
 17 Q. Do you recall whether Novell's right to
 18 receive a percentage of any proceeds of the Microsoft
 19 lawsuit is in the Asset Purchase Agreement between
 20 Caldera and Novell?
 21 A. Certainly the right to receive any revenue
 22 or a percentage of any revenue to be received by
 23 Caldera over time was contained in there. I think
 24 revenue is defined in there.
 25 Q. And I'm talking specifically about the Asset

1 MR. PALUMBO: I'm asking for his
 2 recollection.
 3 THE WITNESS: My recollection is that it
 4 generally talks about causes of action, and the word
 5 "antitrust" does not appear in there.
 6 BY MR. PALUMBO:
 7 Q. Am I right that if the documents had
 8 specifically mentioned Microsoft or even a private
 9 antitrust case, in your mind, that would have called
 10 more attention to the fact that Novell was both
 11 requiring Caldera to bring this lawsuit and sharing in
 12 the proceeds?
 13 A. Possibly that's right.
 14 Q. Okay. Am I right that Novell's requirement
 15 to bring the private antitrust case and its percentage
 16 of any proceeds from that antitrust case is included
 17 in a provision that relates to Novell getting a share
 18 of revenues as a royalty payment from Caldera to
 19 Novell? Is that your recollection?
 20 MR. MULLEN: Let me object. It misstates
 21 his prior testimony. It assumes facts not in
 22 evidence, and the documents speak for themselves. Can
 23 you read the question back?
 24 (Pending question read back.)
 25 MR. MULLEN: I'll make my same objection.

1 Purchase Agreement.
 2 A. I don't know whether it was in the Asset
 3 Purchase Agreement or a separate licensing agreement,
 4 etcetera. I know there were a couple of documents
 5 that were executed simultaneously.
 6 Q. Am I correct that the Asset Purchase
 7 Agreement and the Cross Platform License Agreement are
 8 interdependent? You wouldn't signed one without also
 9 signing the other?
 10 A. That's correct.
 11 Q. So, to understand the transaction between
 12 Caldera and Novell pursuant to which Novell sold DOS
 13 assets, you have to look at both documents, correct?
 14 A. Correct.
 15 Q. Now, you said there's language in one of
 16 those documents about Novell getting a right to
 17 receive revenue, correct?
 18 A. A percentage of revenue -- of Caldera's
 19 revenue.
 20 Q. But there's nothing expressed about Novell
 21 getting a percentage of either an identified private
 22 antitrust case against Microsoft or simply a generic
 23 private antitrust case?
 24 MR. MULLEN: The document speaks for
 25 itself. Are you asking for his recollection?

1 THE WITNESS: Again, I don't think -- I
 2 don't recall whether there's a specific requirement in
 3 the document. I remember generally that there is a
 4 provision in the document that calls out that Novell
 5 is to get a percentage of any revenue that Caldera
 6 derives in the future subject to some rate holiday and
 7 the percentages of any revenues, which included things
 8 like lawsuits, causes of action, settlements,
 9 licensing fees that they might get in the future from
 10 the sale of DOS.
 11 BY MR. PALUMBO:
 12 Q. Okay. Well, given the fact that part of the
 13 consideration that Novell's Board determined it should
 14 get for DOS assets would be a share of private
 15 antitrust case against Microsoft, why didn't the
 16 documents simply say that in a straightforward way?
 17 MR. MULLEN: Objection, asked and answered.
 18 Go ahead. It's argumentative.
 19 THE WITNESS: We've answered that earlier.
 20 I think I answered it earlier.
 21 BY MR. PALUMBO:
 22 Q. Okay. You could have simply said in the DOS
 23 sale documents of Novell, Caldera shall sue Microsoft,
 24 and Novell shall get a percentage of any settlement
 25 and judgment, couldn't you? It would have been easy