

MANNING CURTIS BRADSHAW
& BEDNAR LLC
Alan C. Bradshaw, #4801
Tyson B. Snow, #10747
170 South Main Street, Suite 900
Salt Lake City, UT 84101
Telephone: (801) 363-5678
Facsimile: (801) 364-5678

GAUNTLETT & ASSOCIATES
David A. Gauntlett
Joseph S. McMillen
18400 Von Karman, Suite 300
Irvine, CA 92612
Telephone: (949) 553-1010
Facsimile: (949) 553-2050

Attorneys for Plaintiff, Novell, Inc.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH - CENTRAL DIVISION

NOVELL, INC., a Delaware corporation,)	
)	
Plaintiff,)	MEMORANDUM IN SUPPORT
)	OF MOTION FOR
v.)	REASSIGNMENT BASED UPON
)	RELATED CASE
VILIGANT INSURANCE COMPANY, a)	
New York corporation,)	Civil No. 2:09cv00496
)	
Defendants.)	Judge Ted Stewart
)	
)	

Novell, Inc., by and through its counsel of record, hereby files this Memorandum in Support of Motion for Reassignment Based Upon Related Case.

ARGUMENT

All parties in civil actions filed before the United States District Court for the District of Utah must indicate in a civil cover sheet whether the matter is related to another case pending in the District Court. See Form JS44 (Civil Cover Sheet) at VIII. The instructions for Civil Cover

Sheet Form JS44 state that counsel must "[i]f there are related pending cases, insert the docket numbers and the corresponding judge names for such cases."

In this case, Novell stated that this matter is related to the *SCO Group, Inc. v. Novell, Inc.*, Case No. 2:04cv00139 ("the SCO Action") pending before the Honorable Dale A. Kimball. The SCO Action is related to this Complaint for Declaratory Judgment and indeed the SCO Action is the subject matter of this lawsuit. Specifically, SCO has brought claims against its liability insurance company, Vigilant Insurance Company ("Vigilant"), seeking to establish that Vigilant has improperly failed to defend Novell against the allegations made in the SCO Action. At the time of filing its Complaint for Declaratory Action, Novell also filed a Declaration of David A. Gauntlett in Support of Plaintiff Novell, Inc.'s Notice of Related Case. The Declaration references the fact that other federal courts have found that when a declaratory action seeking insurance coverage relates to a pending case in the same district, it is appropriate to transfer the declaratory judgment action to the judge handling the underlying lawsuit because of familiarity with the factual allegations in the underlying case, knowledge concerning the need and appropriateness of defense costs incurred, and to avoid substantial duplication of labor if the matter is heard by different judges within the same district.

DUCivR 42-1(v) recognizes, in the context of consolidation, these same principles of judicial economy including whether there will be "substantial duplication of labor or unnecessary court costs or delay if heard by different judges." *Id.* DUCivR 42-1, however, applies only to consolidation of cases and the District of Utah local rules do not address "related" cases despite the fact that all parties are required to make a disclosure when related cases are filed.¹ Pursuant

¹Specifically, DUCivR 83-2(a) deals with original assignment and states that all initial filings will be "randomly assigned by an automated case assignment system." *Id.* However, reassignment as a result of relatedness is not addressed.

to 28 U.S.C. § 137, "[t]he chief judge of the district shall be responsible for the observance of [assignment] rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe." *Id.* Based upon the absence of a related case rule or order in this District, reassignment based upon relatedness is left to the Chief Judge of the District.

Based upon interests of judicial economy and efficiency, Novell requests that this insurance declaratory judgment action be transferred to Judge Dale A. Kimball, who is the judge assigned to the SCO Action.

DATED this 10th day of June, 2009.

MANNING CURTIS BRADSHAW &
BEDNAR, LLC

/s/
Alan C. Bradshaw

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2009, I caused to be served a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION FOR REASSIGNMENT BASED UPON RELATED CASE** via service of process at the address indicated below:

Vigilant Insurance Company
c/o Registered Agent: CT Corporation
136 East South Temple, Suite 2100
Salt Lake City, UT 84111

/s/

Alan C. Bradshaw