

EXHIBIT B

INSTRUCTION NO. __

SPOLIATION

During the course of the trial, you have seen documents that were created by Novell in the course of its business and produced to Microsoft as part of the discovery process. You should be aware, however, that Novell did not retain all of the documents that it created during the time period it owned WordPerfect and Quattro Pro. In fact, some of Novell's documents in the 1994 to 1996 time period were discarded, transferred to the subsequent owner of WordPerfect and Quattro Pro, or otherwise lost by Novell even though Novell should have retained those documents if it was going to file a lawsuit.

There may have been instances during trial where you believed that there should have been documents created by Novell on some subject matter in the relevant time period, but none were presented to you. In those circumstances, unless Novell has presented evidence that convinces you otherwise, you may assume that other documents created by Novell existed but were discarded, transferred or lost because Novell decided not to keep them for this case. You may also assume that those documents would have been unfavorable to Novell's position in this case.

In addition, some of the documents that you have seen that were created by Novell do not include the name of the author or authors or the date or dates on which those documents were written or the authors or dates were modified. Other documents you have seen contain an inaccurate date. These things are due to the fact that Novell did not take steps to preserve that information for this case. In those instances, unless Novell convinces you that the authors or dates of those documents have been established by other evidence or by other

information in the documents themselves, you should not hold it against Microsoft in any way that the true identity of the author is unknown, or that it is now impossible to establish an exact date on which the document was created. If the absence of an author or date is of concern to you, you should draw adverse inferences only against Novell, not Microsoft.¹

¹ Adapted from Federal Civil Jury Instructions of the Seventh Circuit (2009 rev.); *Stevenson v. Union Pac. R.R. Co.*, 354 F.3d 739, 746-50 (8th Cir. 2004); *E.I. du Pont de Nemours and Co. v. Kolon Indus., Inc.*, 2011 WL 2966862, at *35 (E.D. Va. July 21, 2011); *Pension Comm. of Univ. of Montreal Pension Plan*, 685 F. Supp. 2d 456, 470-71 (S.D.N.Y. 2010).