

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

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

MDL Docket No. 1332
Hon. J. Frederick Motz

MICROSOFT'S ANSWER AND DEFENSES

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Defendant Microsoft Corporation (“Microsoft”), by its undersigned counsel, hereby responds to the Complaint of plaintiff Novell, Inc. (“Novell”) as follows:

I. ANSWER

1. Microsoft denies the allegations of Paragraph 1 except (a) admits that Novell has filed a complaint asserting claims against Microsoft under Section 4 of the Clayton Act, 15 U.S.C. § 15, for damages allegedly incurred as a result of alleged conduct in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2; (b) admits that WordPerfect Corporation merged with Novell in June 1994; and (c) respectfully refers the Court to the Complaint for a complete and accurate description of its contents.

2. Microsoft denies the allegations of Paragraph 2 except admits that Novell sold the rights to develop the WordPerfect word processing application and the Quattro Pro spreadsheet application to Corel Corporation in March 1996.

3. Microsoft denies the allegations of Paragraph 3 except admits that (a) the term “operating system” is generally used to refer to software that, among other things, schedules the execution of tasks by the microprocessor of a computer, facilitates the flow of information among various hardware components, and controls input/output channels; (b) an operating system also provides a platform on which applications and other software products run; and (c) WordPerfect is an example of such an application.

4. Microsoft denies the allegations of Paragraph 4.

5. Microsoft denies the allegations of Paragraph 5.

6. Microsoft denies the allegations of Paragraph 6 except (a) admits that (i) on April 3, 2000, Judge Thomas Penfield Jackson issued conclusions of law in *United States v. Microsoft Corp.*, 87 F. Supp. 2d 30 (D.D.C. 2000); (ii) on June 28, 2001, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion in *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (the "D.C. Circuit Opinion"); (iii) on August 7, 2001, Microsoft petitioned the Supreme Court for a writ of certiorari; and (iv) on October 9, 2001, the Supreme Court denied Microsoft's petition for writ of certiorari; and (b) respectfully refers the Court to Judge Jackson's conclusions of law and to the D.C. Circuit Opinion for a complete and accurate description of their contents.

7. Microsoft denies the allegations of Paragraph 7 and respectfully refers the Court to the unidentified documents referenced therein for a complete and accurate description of their contents.

8. Microsoft denies the allegations of Paragraph 8 except admits that the usage share of Microsoft Word increased as Microsoft steadily improved that product and as WordPerfect Corporation and Novell mismanaged the development and marketing of WordPerfect.

9. Microsoft denies information sufficient to form a belief as to the truth of the allegations of Paragraph 9 except admits that Novell licensed and sold office productivity applications, including the WordPerfect word processing application, throughout the United States and the world during some of the time period relevant to the Complaint.

10. Microsoft admits the allegations of Paragraph 10.

11. The allegations of Paragraph 11 assert legal conclusions as to which no response is required.

12. Microsoft admits that it transacts, and is authorized to transact, business in the District of Utah. The further allegations of Paragraph 12 assert legal conclusions as to which no response is required.

13. Microsoft admits that it licenses personal computer (“PC”) and server operating systems as well as applications throughout the United States and the world and delivers copies of such products across state lines and international borders. The further allegations of Paragraph 13 assert legal conclusions as to which no response is required.

14. Microsoft denies the allegations of Paragraph 14 except (a) admits that on May 18, 1998, the United States Department of Justice filed a complaint (the “DOJ Complaint”) initiating a civil proceeding against Microsoft in the United States District Court for the District of Columbia (the “DOJ Proceeding”); and (b) respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

15. Microsoft denies the allegations of Paragraph 15 except (a) admits that (i) on November 5, 1999, Judge Jackson of the United States District Court for the District of Columbia issued findings of fact in *United States v. Microsoft Corp.*, 84 F. Supp. 2d 9 (D.D.C. 1999); (ii) on April 3, 2000, Judge Jackson issued conclusions of law in *United States v. Microsoft Corp.*, 87 F. Supp. 2d 30 (D.D.C. 2000); (ii) on June 28, 2001, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion in *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001); (iii) on November 12, 2002, Judge Colleen Kollar-Kottelly of the United States District Court for

the District of Columbia entered a judgment as to which Microsoft agreed to be bound; and (b) respectfully refers the Court to the findings, conclusions, and opinions of these courts for a complete and accurate descriptions of their contents.

16. Microsoft denies the allegations of Paragraph 16.

17. Microsoft denies the allegations of Paragraph 17 and respectfully refers the Court to Judge Jackson's findings of fact for a complete and accurate description of their contents.

18. Microsoft denies the allegations of Paragraph 18 except (a) admits that Rebecca M. Henderson filed a declaration dated April 28, 2000 on behalf of the United States (the "Henderson Declaration") in the remedies phase of the DOJ Proceeding and (b) respectfully refers the Court to the Henderson Declaration for a complete and accurate description of its contents.

19. Microsoft denies the allegations of Paragraph 19 and respectfully refers the Court to the Henderson Declaration for a complete and accurate description of its contents.

20. Microsoft denies the allegations of Paragraph 20 and respectfully refers the Court to Judge Jackson's findings of fact for a complete and accurate description of their contents.

21. Microsoft denies the allegations of Paragraph 21 and respectfully refers the Court to the DOJ Complaint, Judge Jackson's findings of fact, the D.C. Circuit Opinion, and the Complaint for a complete and accurate description of their contents.

22. Microsoft denies the allegations of Paragraph 22 except (a) admits that Microsoft and Novell entered into an agreement (the "Tolling Agreement") whereby both parties agreed that the statute of limitations as to Novell's claims underlying this lawsuit -- to the extent the limitations period had not already expired as of November 7, 2003 -- would be tolled from November 7, 2003 until the date this suit was filed; and (b) respectfully refers the Court to the Tolling Agreement for a complete and accurate description of its contents.

23. Microsoft denies the allegations of Paragraph 23 and respectfully refers the Court to Judge Jackson's findings of fact for a complete and accurate description of their contents.

24. Microsoft denies the allegations of Paragraph 24.

25. Microsoft denies the allegations of Paragraph 25 except (a) admits that the term "operating system" is generally used to refer to software that, among other things, schedules the execution of tasks by the microprocessor of a computer, facilitates the flow of information among various hardware components, and controls input/output channels; (b) admits that computers that are designed for use by one user at a time and contain microprocessors designed and manufactured by Intel Corporation ("Intel") or other companies whose microprocessors are compatible with Intel's microprocessors are sometimes called "Intel-compatible PCs"; (c) admits that an operating system for non-Intel-compatible PCs will typically not run on Intel-compatible PCs; and (d) respectfully refers the Court to the D.C. Circuit Opinion and to Judge Jackson's findings of fact for a complete and accurate description of their contents.

26. Microsoft denies the allegations of Paragraph 26.

27. Microsoft denies the allegations of Paragraph 27 except admits that word processing applications are, *inter alia*, applications in which text-based documents can be created, edited, printed, and stored.

28. Microsoft denies the allegations of Paragraph 28 except admits that spreadsheet applications are, *inter alia*, applications in which numerical and other data can be electronically organized, displayed, and manipulated.

29. Microsoft denies the allegations of Paragraph 29 except admits that (a) Microsoft introduced the first version of the Microsoft Disk Operating System (“MS-DOS”) in 1981; and (b) MS-DOS was a command-driven operating system that required users to type specific instructions at a command prompt in order to perform various tasks.

30. Microsoft denies the allegations of Paragraph 30 except admits that (a) Microsoft introduced Windows 1.0 in 1985; (b) Windows 1.0 allowed personal computer users to perform functions such as starting other programs or organizing files by selecting elements on a graphical display using a pointing device such as a mouse; (c) Windows exposed application programming interfaces (“APIs”) that became popular for writing graphical applications, such as word processors and spreadsheets; (d) Microsoft released Windows 2.0 in 1987; and (e) Microsoft co-introduced an operating system known as “OS/2” with IBM Corporation in 1987.

31. Microsoft denies the allegations of Paragraph 31 except (a) admits that Microsoft introduced Windows 3.0 in 1990; (b) admits that Windows 3.1 was the immediate successor to Windows 3.0; and (c) respectfully refers the Court to Judge Jackson's findings of fact and conclusions of law for a complete and accurate description of their contents.

32. Microsoft denies the allegations of Paragraph 32 except admits that WordPerfect Corporation introduced the WordPerfect word processing application for the MS-DOS platform in 1981.

33. Microsoft denies the allegations of Paragraph 33 except admits that a version of the WordPerfect word processing application for OS/2 was introduced in 1990.

34. Microsoft denies the allegations of Paragraph 34 except admits that a version of the WordPerfect word processing application for the Windows platform was not introduced until 1991.

35. Microsoft denies the allegations of Paragraph 35 except admits that (a) the first version of a suite of office productivity applications called Microsoft Office was introduced during the 1990-1991 time period; and (b) version 4.0 of Microsoft Office was released in 1993.

36. Microsoft denies the allegations of Paragraph 36 except admits that (a) WordPerfect Corporation introduced a suite of office productivity applications with Borland International that included the WordPerfect word processing application and the Quattro Pro spreadsheet application; and (b) a subsequent version of WordPerfect for Windows was also introduced in 1993.

37. Microsoft denies the allegations of Paragraph 37 and respectfully refers the Court to the unidentified documents underlying the transactions referenced by Paragraph 37 for a complete and accurate description of their contents.

38. Microsoft admits the allegations of Paragraph 38.

39. Microsoft denies the allegations of Paragraph 39 except (a) admits that Microsoft introduced Windows 95 in August 1995; and (b) respectfully refers the Court to the DOJ Complaint and Judge Jackson's findings of fact and conclusions of law for a complete and accurate description of their contents.

40. Microsoft denies the allegations of Paragraph 40.

41. Microsoft denies the allegations of Paragraph 41 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

42. Microsoft denies the allegations of Paragraph 42 and respectfully refers the Court to the DOJ Complaint, Judge Jackson's findings of fact and conclusions of law, and the D.C. Circuit Opinion for a complete and accurate description of their contents.

43. Microsoft denies the allegations of Paragraph 43 and respectfully refers the Court to Judge Jackson's findings of fact and conclusions of law and the D.C. Circuit Opinion for a complete and accurate description of their contents.

44. Microsoft denies the allegations of Paragraph 44 and respectfully refers the Court to the D.C. Circuit Opinion for a complete and accurate description of its contents.

45. Microsoft denies the allegations of Paragraph 45.

46. Microsoft denies the allegations of Paragraph 46 except (a) admits that Component Integration Laboratories (“CIL”) was established by Novell, Borland, and other parties in 1993; and (b) respectfully refers the court to the magazine article referenced in Paragraph 46 for a complete and accurate description of its contents.

47. Microsoft denies the allegations of Paragraph 47 and respectfully refers the Court to the DOJ Complaint, Judge Jackson’s findings of fact and conclusions of law, and the D.C. Circuit Opinion for a complete and accurate description of their contents.

48. Microsoft denies the allegations of Paragraph 48 except (a) admits that the term “middleware” is sometimes used to refer to software that calls upon functionality provided by an underlying operating system while simultaneously exposing its own APIs to software developers; and (b) respectfully refers the Court to the DOJ Complaint, Judge Jackson’s findings of fact and conclusions of law, and the D.C. Circuit Opinion for a complete and accurate description of their contents.

49. Microsoft denies the allegations of Paragraph 49 and respectfully refers the Court to the referenced CIL “Marketing Plan 3” for a complete and accurate description of its contents.

50. Microsoft denies the allegations of Paragraph 50.

51. Microsoft denies the allegations of Paragraph 51 and respectfully refers the Court to the DOJ Complaint and Judge Jackson’s conclusions of law for a complete and accurate description of their contents.

52. Microsoft denies the allegations of Paragraph 52 except (a) admits that word processing was an important use of personal computers during the time period at issue in the Complaint; (b) admits that WordPerfect was historically available on a number of different operating systems; and (c) respectfully refers the Court to the DOJ Complaint, Judge Jackson's findings of fact, and the D.C. Circuit Opinion for a complete and accurate description of their contents.

53. Microsoft denies the allegations of Paragraph 53 except admits that Carl Shapiro submitted a declaration dated April 28, 2000 in connection with the remedies phase of the DOJ Proceeding (the "Shapiro Declaration") and respectfully refers the Court to Judge Jackson's conclusions of law, the Shapiro Declaration, and the D.C. Circuit Opinion for a complete and accurate description of their contents.

54. Microsoft denies the allegations of Paragraph 54.

55. Microsoft denies the allegations of Paragraph 55 and respectfully refers the Court to the unidentified documents referenced therein for a complete and accurate description of their contents.

56. Microsoft denies the allegations of Paragraph 56.

57. Microsoft denies the allegations of Paragraph 57 except admits that (a) for an application to run, it must invoke certain functionality provided by the underlying operating system; and (b) software applications typically obtain functionality by calling upon APIs exposed by the operating system.

58. Microsoft denies the allegations of Paragraph 58 except (a) admits that Windows operating systems expose a wide variety of APIs that software developers can call upon to invoke a broad range of functionality for use in their applications; and (b) respectfully refers the Court to Judge Jackson's findings of fact for a complete and accurate statement of their contents.

59. Microsoft denies the allegations of Paragraph 59 and respectfully refers the Court to the referenced testimony from the DOJ Proceeding for a complete and accurate statement of its contents.

60. Microsoft denies the allegations of Paragraph 60 except (a) admits that Microsoft has routinely worked with third-party software developers and hardware vendors during the development of improved versions of Windows operating systems; (b) admits that Microsoft creates and supplies documentation about APIs and other features of Windows operating systems and otherwise provides large amounts of technical support and related information to third-party software developers and hardware vendors; and (c) respectfully refers the Court to the referenced testimony from the DOJ Proceeding for a complete and accurate statement of its contents.

61. Microsoft denies the allegations of Paragraph 61 except (a) admits that software developers, sometimes referred to as independent software vendors ("ISVs"), often seek to obtain technical information relating to new versions of Windows, and that the receipt of such technical information is often beneficial to software developers; (b) admits that a version of an operating system that is still under development and has not yet been released for licensing to the general public is frequently referred to as a "beta

release”; (c) admits that Microsoft has in the past provided beta releases of Windows operating systems to individual and corporate users who volunteer to test those beta releases; and (d) respectfully refers the Court to Judge Jackson’s findings of fact for a complete and accurate statement of their contents.

62. Microsoft denies the allegations of Paragraph 62 except (a) admits that it has consistently endeavored to promote third-party support for its operating systems from both software developers and hardware vendors; and (b) respectfully refers the Court to the e-mail referenced therein for a complete and accurate description of its contents.

63. Microsoft denies the allegations of Paragraph 63 except admits that Novell during the time that it owned WordPerfect and Quattro Pro was an important developer of applications for certain Windows operating systems.

64. Microsoft denies the allegations of Paragraph 64.

65. Microsoft denies the allegations of Paragraph 65 except admits that WordPerfect was among the word processing applications that were popular among consumers during the period leading up to the release of Windows 95.

66. Microsoft denies the allegations of Paragraph 66 except (a) admits that Windows 95 offered significant improvements over earlier versions of Windows and was eagerly awaited by consumers and software developers; and (b) respectfully refers the Court to Judge Jackson’s findings of fact for a complete and accurate description of their contents.

67. Microsoft denies the allegations of Paragraph 67 except (a) admits that James Allchin of Microsoft submitted written direct testimony, which was filed on January 7, 1999, in the DOJ Proceeding; and (b) respectfully refers the Court to the referenced testimony for a complete and accurate description of its contents.

68. Microsoft denies the allegations of Paragraph 68 and respectfully refers to the Court to the testimony, memoranda, and other documents referenced therein for a complete and accurate description of their contents.

69. Microsoft denies the allegations of Paragraph 69 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

70. Microsoft denies the allegations of Paragraph 70 except admits that, as to be expected, not every application written for earlier versions of Windows was fully compatible with Windows 95.

71. Microsoft denies the allegations of Paragraph 71 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

72. Microsoft denies the allegations of Paragraph 72 except admits that, prior to the release of Windows 95, Microsoft provided assistance to software developers that were developing applications for use with that software.

73. Microsoft denies the allegations of Paragraph 73.

74. Microsoft denies the allegations of Paragraph 74 and respectfully refers the Court to the e-mail referenced therein for a complete and accurate description of its contents.

75. Microsoft denies the allegations of Paragraph 75.

76. Microsoft denies the allegations of Paragraph 76.

77. Microsoft denies the allegations of Paragraph 77.

78. Microsoft denies the allegations of Paragraph 78 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

79. Microsoft denies the allegations of Paragraph 79.

80. Microsoft denies the allegations of Paragraph 80.

81. Microsoft denies the allegations of Paragraph 81 except admits that a “bit” is short for “binary digit” and is the smallest unit of information a computer can hold.

82. Microsoft denies the allegations of Paragraph 82.

83. Microsoft denies the allegations of Paragraph 83.

84. Microsoft denies the allegations of Paragraph 84.

85. Microsoft denies the allegations of Paragraph 85 except admits that it often entered into nondisclosure agreements with software developers relating to versions of Windows still under development and respectfully refers the Court to these nondisclosure agreements for a complete and accurate description of their contents.

86. Microsoft denies the allegations of Paragraph 86 and respectfully refers the Court to Judge Jackson’s findings of fact for a complete and accurate description of their contents.

87. Microsoft denies the allegations of Paragraph 87 and respectfully refers the Court to the unidentified documents referenced therein for a complete and accurate description of their contents.

88. Microsoft denies the allegations of Paragraph 88.

89. Microsoft denies the allegations of Paragraph 89.

90. Microsoft denies the allegations of Paragraph 90 except admits that the Rich Text Format (“RTF”) can be used as a file format in Microsoft Word and other Windows applications.

91. Microsoft denies the allegations of Paragraph 91.

92. Microsoft denies the allegations of Paragraph 92 except admits that Microsoft’s applications developers had access to the specifications for RTF.

93. Microsoft denies the allegations of Paragraph 93 except (a) admits that applications and other programs than run on Windows often feature a “toolbar” which typically appears at the top of the PC’s screen; (b) admits on information and belief that a feature known as a “button bar” which was similar to Microsoft’s “toolbar” was developed by certain other applications developers; and (c) respectfully refers the Court to the unidentified documents referenced in Paragraph 93 for a complete and accurate description of their contents.

94. Microsoft denies the allegations of Paragraph 94 and respectfully refers the Court to the DOJ Complaint, Judge Jackson’s findings of fact, and the D.C. Circuit Opinion for a complete and accurate description of their contents.

95. Microsoft denies the allegations of Paragraph 95.

96. Microsoft denies the allegations of Paragraph 96.

97. Microsoft denies the allegations of Paragraph 97.

98. Microsoft denies the allegations of Paragraph 98.

99. Microsoft denies the allegations of Paragraph 99 except admits that Microsoft's applications developers on occasion had access to specifications for Windows operating systems.

100. Microsoft denies the allegations of Paragraph 100.

101. Microsoft denies the allegations of Paragraph 101.

102. Microsoft denies the allegations of Paragraph 102.

103. Microsoft denies the allegations of Paragraph 103.

104. Microsoft denies the allegations of Paragraph 104.

105. Microsoft denies the allegations of Paragraph 105.

106. Microsoft denies the allegations of Paragraph 106 except admits that (a) Microsoft often invited third-party software developers to technical conferences and porting labs; (b) Microsoft's technical conferences and porting labs often gave software developers an opportunity to "debug" their Windows applications and otherwise ensure that those applications worked well with Windows.

107. Microsoft denies the allegations of Paragraph 107.

108. Microsoft denies the allegations of Paragraph 108.

109. Microsoft denies the allegations of Paragraph 109.

110. Microsoft denies the allegations of Paragraph 110.

111. Microsoft denies the allegations of Paragraph 111.

112. Microsoft denies the allegations of Paragraph 112.

113. Microsoft denies the allegations of Paragraph 113.

114. Microsoft denies the allegations of Paragraph 114 except admits that (a) Original Equipment Manufacturers (“OEMs”) manufacture and distribute PCs; (b) Microsoft licenses its software through multiple channels; and (c) the primary channel through which Microsoft licenses Windows operating systems is pre-installation by OEMs on their new PCs.

115. Microsoft denies the allegations of Paragraph 115 and respectfully refers the Court to Judge Jackson’s findings of fact for a complete and accurate description of their contents.

116. Microsoft denies the allegations of Paragraph 116.

117. Microsoft denies the allegations of Paragraph 117.

118. Microsoft denies the allegations of Paragraph 118 except admits that there are and have been many OEMs in competition with each other.

119. Microsoft denies the allegations of Paragraph 119 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

120. Microsoft denies the allegations of Paragraph 120 except (a) admits that it entered into agreements with distributors who marketed applications such as Microsoft Office; and (b) respectfully refers the Court to such agreements for a complete and accurate description of their contents.

121. Microsoft denies the allegations of Paragraph 121 except (a) admits that it entered into agreements with distributors who marketed applications such as Microsoft Office; and (b) respectfully refers the Court to such agreements for a complete and accurate description of their contents.

122. Microsoft denies the allegations of Paragraph 122 except (a) admits that it entered into license agreements with certain OEMs and (b) respectfully refers the Court to these license agreements for a complete and accurate description of their contents.

123. Microsoft denies the allegations of Paragraph 123 except (a) admits that it entered into license agreements with certain OEMs; and (b) respectfully refers the Court to these license agreements for a complete and accurate description of their contents.

124. Microsoft denies the allegations of Paragraph 124 except (a) admits that it entered into license agreements with certain OEMs and (b) respectfully refers the Court to these license agreements for a complete and accurate description of their contents.

125. Microsoft denies the allegations of Paragraph 125 except (a) admits that it entered into license agreements with certain OEMs and (b) respectfully refers the Court to these license agreements for a complete and accurate description of their contents.

126. Microsoft denies the allegations of Paragraph 126 except (a) admits that it entered into license agreements with certain OEMs and (b) respectfully refers the Court to these license agreements for a complete and accurate description of their contents.

127. Microsoft denies the allegations of Paragraph 127.

128. Microsoft denies the allegations of Paragraph 128.

129. Microsoft denies the allegations of Paragraph 129.

130. Microsoft denies the allegations of Paragraph 130.

131. Microsoft denies the allegations of Paragraph 131 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

132. Microsoft denies the allegations of Paragraph 132 except admits that (a) Microsoft licenses its software through multiple channels; (b) independent retailers and other resellers are among the distribution channels for office productivity software; and (c) direct sales are another channel for the distribution of office productivity software.

133. Microsoft denies the allegations of Paragraph 133.

134. Microsoft denies the allegations of Paragraph 134 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

135. Microsoft denies the allegations of Paragraph 135 and respectfully refers the Court to the D.C. Circuit Opinion and to Judge Jackson's findings of fact for a complete and accurate description of their contents.

136. Microsoft denies the allegations of Paragraph 136 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

137. Microsoft denies the allegations of Paragraph 137 except (a) admits that it invested resources in developing and testing the Web browsing functionality of Windows operating systems referred to as Internet Explorer and (b) respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

138. Microsoft denies the allegations of Paragraph 138 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

139. Microsoft denies the allegations of Paragraph 139 except (a) admits that Microsoft entered into license agreements with certain OEMs and (b) respectfully refers the Court to relevant license agreements and to the DOJ Complaint for a complete and accurate description of their contents.

140. Microsoft denies the allegations of Paragraph 140 except (a) admits that Microsoft entered into agreements with certain Internet Service Providers (“ISPs”) and (b) respectfully refers the Court to the relevant agreements and to the DOJ Complaint for a complete and accurate description of their contents.

141. Microsoft denies the allegations of Paragraph 141 except (a) admits that Microsoft entered into agreements with certain Internet Content Providers (“ICPs”) and (b) respectfully refers the Court to the relevant agreements and to the DOJ Complaint for a complete and accurate description of their contents.

142. Microsoft denies the allegations of Paragraph 142 and respectfully refers the Court to the DOJ Complaint for a complete and accurate description of its contents.

143. Microsoft denies the allegations of Paragraph 143.

144. Microsoft denies the allegations of Paragraph 144 and respectfully refers the Court to the DOJ Complaint, Judge Jackson’s findings of fact and conclusions of law, and the D.C. Circuit Opinion for a complete and accurate description of their contents.

145. Microsoft denies the allegations of Paragraph 145.

146. Microsoft denies the allegations of Paragraph 146.

147. Microsoft denies the allegations of Paragraph 147.

148. Microsoft denies the allegations of Paragraph 148.

149. Microsoft denies the allegations of Paragraph 149.

150. Microsoft denies the allegations of Paragraph 150 except admits that Novell sold WordPerfect to Corel Corporation in March 1996.

151. Microsoft incorporates by reference its answers to Paragraphs 1 through 150 as if fully set forth herein.

152. Microsoft denies the allegations of Paragraph 152.

153. Microsoft denies the allegations of Paragraph 153.

154. Microsoft denies the allegations of Paragraph 154.

155. Microsoft denies the allegations of Paragraph 155.

156. It is not necessary to respond to the allegations of Paragraph 156 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

157. It is not necessary to respond to the allegations of Paragraph 157 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

158. It is not necessary to respond to the allegations of Paragraph 158 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

159. It is not necessary to respond to the allegations of Paragraph 159 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

160. It is not necessary to respond to the allegations of Paragraph 160 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

161. It is not necessary to respond to the allegations of Paragraph 161 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

162. It is not necessary to respond to the allegations of Paragraph 162 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

163. It is not necessary to respond to the allegations of Paragraph 163 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

164. It is not necessary to respond to the allegations of Paragraph 164 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

165. It is not necessary to respond to the allegations of Paragraph 165 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

166. It is not necessary to respond to the allegations of Paragraph 166 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

167. It is not necessary to respond to the allegations of Paragraph 167 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

168. It is not necessary to respond to the allegations of Paragraph 168 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

169. It is not necessary to respond to the allegations of Paragraph 169 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

170. It is not necessary to respond to the allegations of Paragraph 170 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

171. It is not necessary to respond to the allegations of Paragraph 171 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

172. It is not necessary to respond to the allegations of Paragraph 172 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

173. It is not necessary to respond to the allegations of Paragraph 173 in light of the Court's order of June 10, 2005, which dismissed the claim to which these allegations relate.

174. Microsoft incorporates by reference its answers to Paragraphs 1 through 173 as if fully set forth herein.

175. Microsoft denies the allegations of Paragraph 175.

176. Microsoft denies the allegations of Paragraph 176.

177. Microsoft denies the allegations of Paragraph 177.

178. Paragraph 178 does not set forth any factual assertions that require a response.

179. Microsoft denies that Novell is entitled to any of the relief prayed for in its "PRAYER FOR RELIEF."

II. DEFENSES

Microsoft asserts the following defenses:

First Defense

Novell has failed to state a claim upon which relief can be granted.

Second Defense

Novell's claims are barred, in whole or in part, by the statute of limitations.

Third Defense

Novell's claims are barred, in whole or in part, by the doctrine of laches.

Fourth Defense

Novell's claims are barred, in whole or in part, by the doctrine of estoppel.

Fifth Defense

Novell's claims are barred, in whole or in part, by the doctrine of waiver.

Sixth Defense

Novell's claims are barred, in whole or in part, because it does not have standing to assert those claims.

Seventh Defense

Novell's claims are barred, in whole or in part, because it did not suffer and cannot demonstrate any antitrust injury.

Eighth Defense

Novell's claims are barred, in whole or in part, because it has not suffered any injury in fact.

Ninth Defense

Novell's claims are barred, in whole or in part, by failure to mitigate damages.

Tenth Defense

Novell's claims are barred, in whole or in part, because Microsoft's conduct constitutes permissible competitive activity.

Eleventh Defense

Novell has failed to state an adequate basis for an award of treble damages.

