

EXHIBIT 25

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 RESPONSES AND OBJECTIONS TO NOVELL'S
FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS**

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, Local Rule 104 and the Discovery Guidelines of this Court, defendant Microsoft Corporation ("Microsoft") hereby responds and objects to the First Set of Interrogatories and Document Requests (collectively, the "Requests") of plaintiff Novell, Inc. ("Novell") as follows.

GENERAL OBJECTIONS

1. In Pretrial Order No. 1, the Court ordered that "to the maximum extent possible" duplicative or cumulative discovery in the consolidated proceedings before the Court was to be avoided. (Pretrial Order No. 1 ¶¶ 9-10 (June 26, 2000).) In accordance with that order, Microsoft agreed in 2005 to allow Novell access to all documents produced by Microsoft in prior Competitor and Consumer cases in this multidistrict litigation ("MDL proceeding") and in all state court cases raising similar factual allegations. Pursuant to that agreement, Novell requested months ago and obtained from the Court on February 1, 2008, an order allowing it access to all such documents in the possession of plaintiffs' counsel in

Comes v. Microsoft Corp., No. CL 82311 (Polk Cty., Iowa), consisting of approximately 23 million pages of documents in a fully searchable database in which each document is coded with identifying information (e.g., author, recipient, date). (Order of February 1, 2008, at 2.) That collection includes, Microsoft believes, every document produced by Microsoft over the past decade in response to thousands of discovery requests in numerous actions with allegations similar to those found in Novell's Complaint. As Novell recognized in seeking access to the *Comes* database — which Microsoft itself does not have — any attempt to replicate that collection “would require months of work at enormous expense.” (Order of February 1, 2008, at 2.) Microsoft has spent millions of dollars and thousands of hours conducting multiple worldwide searches for, and reviews of, documents, culminating in the extraordinary production that Novell already has. Now, without even spending the time necessary to review the millions of pages of Microsoft documents it has obtained, Novell has, in disregard of Pretrial Order No. 1, directed further cumulative and duplicative discovery requests to Microsoft. As a result, Microsoft objects to the Requests as unduly burdensome, cumulative and duplicative of prior discovery requests and inconsistent with the orders of this Court.

2. Microsoft also objects to the Requests to the extent that they call for the production of documents or information already in the possession, custody or control of plaintiff or its counsel, publicly available or equally available to plaintiff, or obtainable from some more convenient, less burdensome or less expensive source.

3. Microsoft objects to the Requests to the extent that they purport to impose obligations, burdens or duties upon Microsoft that exceed the requirements of the Federal

Rules of Civil Procedure and of the Local Rules, Discovery Guidelines and orders of this Court.

4. Microsoft objects to the Requests to the extent that they purport to require the production of documents that are subject to any privilege or immunity, including without limitation the attorney-client privilege or attorney work product doctrine, and any other applicable privilege, rule, immunity or duty of confidentiality which precludes or limits production or disclosure of information.

5. Microsoft objects to the Requests to the extent that they purport to require anything beyond a reasonable search for responsive documents within the possession, custody or control of Microsoft.

6. Microsoft's responses below reflect the current state of Microsoft's knowledge, understanding and belief with respect to the matters addressed in the Requests. Irrespective of whether Microsoft produces documents or information in response to particular Requests, Microsoft reserves the right to revise, correct, supplement or clarify the content of this response in accordance with the Federal Rules of Civil Procedure. The objections herein are not intended as, and shall not in any way be deemed, an admission or representation as to the existence or non-existence of any documents or the admissibility of any document.

7. The responses and objections contained herein are subject to, and without waiver of, any right of Microsoft to: (a) raise objections to other discovery requests directed at the subject matter of the Requests or to any other discovery requests; and (b) make additional or supplementary objections to the Requests in the event the objections set forth in this response are overruled by the Court.

OBJECTIONS TO INSTRUCTIONS

1. Unless otherwise indicated, the relevant time period for these Interrogatories and Document Requests is 1990 through 1999.

Objection:

Microsoft objects to the statement of the "relevant time period" in Instruction No. 1 as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Novell only owned the office productivity applications for which it alleges harm for less than two years (from June 1994 to March 1, 1996), yet its Requests purport to cover a period of ten years. Without waiving this objection, Microsoft states that, pursuant to prior agreements and practices between and by counsel and the parties in the MDL proceeding and related state court proceedings, the documents and information Microsoft has previously produced, and which is included in the *Comes* database, include responsive documents and information from the period between January 1, 1990, and December 31, 1999.

2. In defining terms in this discovery, you should use the definitions set forth in Part II below and, in the absence of a definition, the plain meaning of the words.

3. To the extent practicable, Novell has drafted these Interrogatories and Document Requests to avoid duplication with the materials that were produced in *Comes v. Microsoft*. Where there is duplication, Novell requests that you identify the duplicative documents. You need not produce additional copies of those materials.

Objection:

Microsoft objects to Instruction No. 3 as unduly burdensome and an improper attempt by Novell to shift to Microsoft the burden of reviewing the documents and information already produced to Novell and identifying duplicates. Microsoft will not do either.

**OBJECTIONS TO SPECIFIC INSTRUCTIONS
FOR INTERROGATORIES**

1. Please furnish, under oath, all information that is in your possession or otherwise available to you, including information in the possession of your attorneys.

Objection:

Microsoft objects to Interrogatory Instruction No. 1 to the extent it seeks information in the possession of Microsoft's attorneys.

2. Your answers to these Interrogatories should be timely supplemented as required by Fed. R. Civ. P. 26(e).

3. Please provide a separate response for each Interrogatory.

4. Pursuant to Local Rule Discovery Guideline 9(b), no part of an answer should be left unanswered merely because an objection is interposed to another part of an Interrogatory. If you cannot fully respond to an Interrogatory, please answer it to the extent possible, and explain: (a) the nature of the information or knowledge that you claim you cannot furnish; and (b) why you cannot provide such information or knowledge. See L.R. Disc. Guideline 9(b).

Objection:

Microsoft objects to Interrogatory Instruction No. 4 as unduly burdensome and exceeding the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines. Microsoft will comply with Discovery Guidelines 9(a) and 9(b).

5. If you object to an Interrogatory, the objection should state with specificity all grounds. Novell will deem any objection not stated within the time provided by the Federal Rules of Civil Procedure, or any extensions, to be waived.

Objection:

Microsoft objects to Interrogatory Instruction No. 5 to the extent that it seeks to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines. Microsoft

further objects to Interrogatory Instruction No. 5 to the extent that it purports to alter or affect the discretion possessed by the Court pursuant to Federal Rule 33(b)(4) and applicable law.

6. If you claim a privilege or immunity as to any information or documents, or if you do not respond fully to an Interrogatory, you should, in accordance with Fed. R. Civ. P. 26(b)(5) and Local Rule Discovery Guideline 9, state the specific grounds for not responding fully and respond to any non-objectionable portions of the particular Interrogatory. In asserting any privilege or immunity, you shall identify with specificity the nature of the privilege being claimed. You should also provide the following information:

- a. For oral communications:
 - i. the name of the person making the communication and the names of persons present while the communication was made, and, where not apparent, the relationship of the persons present to the person making the communication;
 - ii. the date and place of the communication; and
 - iii. the general subject matter of the communication.
- b. For documents:
 - i. the type of document;
 - ii. the general subject matter of the document;
 - iii. the date of the document; and
 - iv. such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.

Objection:

Microsoft objects to Interrogatory Instruction No. 6 to the extent that it seeks to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines.

7. Whenever you answer any Interrogatory by reference to records from which the answer may be derived or ascertained, as permitted by Fed. R. Civ. P. 33(c), please:

- a. Identify such records with sufficient specificity and detail to permit Novell to locate and identify the records and ascertain the answer in the same direct and economical manner that was available to you. This means, for example, that you should provide the Bates numbers of the documents to which you refer in your answer.
- b. Make available any computerized information, relevant compilations, abstracts or summaries in your custody or possession, or that you can adduce by a relatively simple procedure, from which answers to these Interrogatories can be derived, unless these materials are privileged or otherwise immune from discovery.

Objection:

Microsoft objects to Interrogatory Instruction No. 7 to the extent that it seeks to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines. Microsoft further objects to Interrogatory Instruction No. 7 to the extent that it purports to require Microsoft to identify specific documents that have already been provided to plaintiff. It would be unduly burdensome and expensive for Microsoft to re-review and identify previously produced documents in response to Novell's interrogatories, and Novell is equally capable of searching the millions of searchable and coded documents provided to it by the Comes plaintiffs for any information it seeks.

8. Whenever an Interrogatory refers to or seeks a description of an act, communication, transaction, occurrence, happening, dealing, or instance, your response shall, at a minimum, state:

- c. the date (including year, month and day) when it occurred;
- d. the location where it occurred;
- e. the identity of each person participating therein;
- f. the identity of each person and/or organization or entity on whose behalf each such person participated or purported to participate therein;
- g. the nature, subject matter, and circumstances surrounding it;

- h. the nature and substance of all conversations or oral communications occurring during, or in connection with it; and
- i. the specific location and description of all documents relating to the response.

Objection:

Microsoft objects to Interrogatory Instruction No. 8 to the extent that it seeks to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines. Microsoft further objects to Interrogatory Instruction No. 8 as vague, ambiguous, overly broad and unduly burdensome.

9. These Interrogatories are deemed to be continuing in nature. Should you, your counsel, or anyone representing your interests learn of additional people having knowledge relating to the matters these Interrogatories inquire into, after you have answered them and before trial, you are required and directed to furnish the names of those people to the undersigned counsel giving timely notice of additional witnesses to any of the issues raised in your answers. Please note that objections will be made at the time of trial to any attempt to introduce evidence which is sought by these Interrogatories as to which no disclosure has been made.

Objection:

Microsoft objects to Interrogatory Instruction No. 9 to the extent that it seeks to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines.

**OBJECTIONS TO SPECIFIC INSTRUCTIONS
FOR DOCUMENT REQUESTS**

- 1. You are requested to produce documents in .tiff format.
- 2. To the extent responsive documents or data are maintained in an electronic format, including but not limited to on a disk, tape or other magnetic or machine-readable format, please produce the electronic version along with manuals and all other documents sufficient to operate, display, read and interpret the programs, documents or data.

Objection:

Microsoft objects to Document Request Instruction Nos. 1 and 2 to the extent that they seek to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines. Microsoft further objects to Document Request Instruction Nos. 1 and 2 to the extent that they seek to require Microsoft to produce any previously produced documents or information in a format other than the format in which such documents or information were previously produced; requiring Microsoft to reproduce information in different formats would place an undue burden and needless expense upon Microsoft.

Microsoft further objects to Document Request Instruction No. 1 on the ground that most of the documents that Novell has produced to Microsoft were not produced in .tiff format. In response to Microsoft's document requests, and after substantial delay, Novell provided counsel for Microsoft with access to 485 boxes of purportedly responsive hard-copy documents containing hundreds of thousands of pages. Novell made no effort to identify which of those documents were actually responsive to Microsoft's document requests, and in fact a significant portion appeared not to be. Novell refused to provide Microsoft with a copy set of these documents or to ship the documents to New York, requiring Microsoft to send its counsel to Washington, D.C. to perform a manual review for responsiveness, a task that should have been undertaken by Novell. Microsoft will also be bearing half the cost of scanning the documents that it selected into .tiff format. After putting Microsoft to such unnecessary effort and expense by refusing to scan and properly review its documents, it is

highly unreasonable and entirely inappropriate for Novell to demand that Microsoft undertake such effort and expense for Novell.¹

Microsoft further objects to Document Request Instruction No. 2 as overly broad, unduly burdensome and not calculated to lead to the discovery of relevant information.

Microsoft further objects to Document Request Instruction No. 2 to the extent that it purports to require Microsoft to produce third-party manuals or software.

3. If you object to any part of these Document Requests, please (a) state each objection you assert in sufficient detail to permit the Court to determine the validity of the objection; and (b) produce all responsive documents to which your objection does not apply.

4. If you claim that all or any part of any Document Request is vague or ambiguous, please identify the specific language you consider vague or ambiguous and state the interpretation of the language in question you used to frame your response.

Objection:

Microsoft objects to Document Request Instruction Nos. 3 and 4 to the extent that they seek to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines.

5. If more than one copy of a responsive document exists, produce each copy that includes (a) any notations or markings not on other copies, including handwritten notations or routing or filing instructions; and (b) attachments not included as part of other copies.

Objection:

Microsoft objects to Document Request Instruction No. 5 to the extent that it seeks to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines. Microsoft

¹ Novell has also produced 5 DVDs containing documents in .tiff format, but even here Novell's production is problematic. The document files contain no metadata providing the custodian or other identifying information, making it impossible to determine the origin of each document. In addition, the documents apparently were not scanned using optical character recognition (OCR) technology, thus preventing Microsoft from running text searches of the documents.

further objects to Document Request Instruction No. 5 as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information.

6. If you withhold information or documents (including attachments to documents) responsive to these Document Requests based upon any claim of privilege, please provide a log or index that includes at least the following information on a document-by-document basis: (a) the specific privilege asserted or other particular reason you rely upon for not producing the requested document or information; (b) the date of the document and any different date when it was prepared; (c) the author(s), addressee(s) and copyee(s) of each document as well as any other recipient not identified on the face of the document; (d) the subject matter of the document or information withheld; and (e) the medium of the document (e.g., paper or electronic), the document type (e.g., letter, memorandum, presentation, spreadsheet) and length of the document, as well as the existence of any attachments if they are also being withheld as privileged.

Objection:

Microsoft objects to Document Request Instruction No. 6 to the extent that it seeks to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines. Microsoft further objects to Document Request Instruction No. 6 to the extent that it seeks to require Microsoft to create or modify any privilege log or index with respect to document requests that are cumulative, duplicative or encompassed by prior document requests to Microsoft.

7. If any document called for by a Document Request has been destroyed, for each such document, identify when the document was destroyed, the reason for and circumstances surrounding its destruction, and describe the contents of each such document.

Objection:

Microsoft objects to Document Request Instruction No. 7 to the extent that it seeks to impose obligations, burdens or duties on Microsoft that exceed the requirements of the Federal Rules of Civil Procedure and the Local Rules and Discovery Guidelines.

OBJECTIONS TO DEFINITIONS

The terms defined below are intended to have the meanings stated. Microsoft's answers should be fully responsive to each Interrogatory and Document Request as understood in accordance with these terms as defined:

1. The terms "DOCUMENT" and "DOCUMENTS" mean all papers, writings, drawings, graphs, computer or electronic records (including, in particular, electronic or paper versions of email messages), phone records, photographs, negatives, audiotapes, videotapes, recordings notes, other data compilations from which information can be obtained or translated, or other things within the scope of Fed. R. Civ. P. 34(a), which are in your possession, custody or control, or the possession, custody or control of your attorneys or any other person or entity who is (or was) your agent or representative, including all written or videotaped deposition transcripts and prior discovery responses served by Microsoft in connection with all Competitor and Consumer Cases (as those terms are defined in the Protective Order as approved by Judge Motz on June 24, 2005, and amended on February 12, 2008) and in state court cases raising allegations of fact similar to those alleged in the Competitor and Consumer Cases. Documents generated by another party or non-party and in your possession, custody or control are within the scope of this request. With regard to information maintained by electronic means, the terms "DOCUMENT" and "DOCUMENTS" include data processing and computer printouts, tapes, disks, and data stored in computers or data processing equipment, together with programs and program documents necessary to retrieve, read and use such data, and all other mechanical or electronic means of storing or recording data. All drafts and non-identical copies are separate documents and should be produced.

Objection:

Microsoft objects to the definitions of "DOCUMENT" and "DOCUMENTS" as vague, ambiguous, overly broad and unduly burdensome, and will use the meaning ascribed to these terms by the Discovery Guidelines in responding to the Requests.

2. The terms "PERSON" and "PERSONS" mean any natural person or individual, or any business, legal or governmental entity or association.

3. The term "IDENTIFY" (*as to persons*) means to give (i) the person's full name; (ii) the present or last known address; (iii) the present or last known telephone number; and (iv) when referring to a natural person, (a) the person's place of employment, title, and responsibilities at all times relevant to the Interrogatory, and (b) the present or last known place of employment, and the present or last known employer's address and telephone number. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent Interrogatories that seek the identification of that person.

4. The term "IDENTIFY" (*as to statements or communications*) means to give (i) the name of the person making the statements or communication; (ii) the person to whom the statement or communication was made; (iii) the date when the statement or communication was made; and (iv) the content of the statement or communication.

5. The term "IDENTIFY" (*as to documents*) means to give (i) the type of document; (ii) the general subject matter, (iii) the date of the document; (iv) the author, addressee, and recipient; and (v) the method of transmission and receipt. If the document has been produced to any party, identify the document by Bates number.

Objection:

Microsoft objects to each of the definitions of the term "IDENTIFY" as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

6. The terms "YOU," "YOUR," and "MICROSOFT" refer to defendant Microsoft Corporation, including its present or former subsidiaries, affiliates, divisions, predecessors-in-interest, joint ventures, current and former partners, present and former officers, directors, employees, agents, representatives, attorneys, and advisors, both individually and collectively, and any person acting or purporting to act in whole or in part on its or their individual or collective behalf.

Objection:

Microsoft objects to the definition of "YOU," "YOUR" and "MICROSOFT" as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information to the extent that the definition includes any entity other than Microsoft Corporation and also to the extent that it purports to include Microsoft's foreign operations or subsidiaries outside the United States.

7. The term "NOVELL" refers to plaintiff Novell, Inc.

8. The term "WORDPERFECT CORP." refers to the WordPerfect Corporation, which NOVELL acquired on June 24, 1994.

9. The term "WORDPERFECT" refers to the word processing application that was owned by the WORDPERFECT CORP. and subsequently acquired by NOVELL, and as otherwise defined in the COMPLAINT.

10. The term "BORLAND" refers to the Borland International, Inc.

11. The term "CALDERA" refers to Caldera, Inc.

12. The term "OTHER ACTIONS" refers to the Competitor and Consumer Cases (as those terms are defined in the Protective Order as approved by Judge Motz on June 24, 2005, and amended on February 12, 2008), all actions filed in connection therewith, and in state court cases raising allegations of fact similar to those alleged in the Competitor and Consumer Cases.

Objection:

Microsoft objects to the definition of "OTHER ACTIONS" as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information in its use of the phrase "all actions filed in connection therewith." Microsoft will construe the term "OTHER ACTIONS" without reference to that phrase.

13. The term "COMPLAINT" refers to the Complaint filed in this action by NOVELL against MICROSOFT on November 12, 2004.

14. The term "ANSWER" refers to the Answer filed in this action by MICROSOFT on June 24, 2005 in response to the COMPLAINT.

15. The term "PC" refers to an Intel-compatible personal computer.

16. The term "API" refers to application programming interfaces.

17. The terms "ISV" and "ISVs" refer to independent software vendors or developers that write, create, distribute, and/or sell software applications that run on PC operating systems.

Objection:

Microsoft objects to the definition of "ISV" and "ISVs" as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information to the extent that it includes anyone that writes, creates, distributes, and/or sells software applications that run on PC operating systems.

18. The term "OEM" refers to an original equipment manufacturer of PCs.

19. The term "OFFICE PRODUCTIVITY APPLICATIONS" refers to software applications, including database programs, word processors, spreadsheets, presentation graphics programs, and e-mail or collaboration programs.

Objection:

Microsoft objects to the definition of "OFFICE PRODUCTIVITY APPLICATIONS" as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information to the extent that it refers to any software application without limitation and to the extent that it includes software, such as e-mail and collaboration programs, that runs on network or server operating systems rather than PC operating systems.

20. The terms "BETA RELEASE" and "BETA RELEASES" mean a version of an operating system that is still under development and has not yet been released for licensing to the general public.

Objection:

Microsoft objects to the definition of "BETA RELEASE" and "BETA RELEASES" as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information to the extent that it includes versions of operating systems under development that have not been released to anyone and is not limited to versions that are sufficiently stable to be released for testing by OEMs, ISVs or other users.

21. The term "DISTRIBUTORS" refers to non-OEM companies that sell PC operating systems or OFFICE PRODUCTIVITY APPLICATIONS, including retailers and online sellers.

Objection:

Microsoft objects to the definition of "DISTRIBUTORS" as vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information to the extent that it includes companies that are not regularly in the business of selling PC operating systems or OFFICE PRODUCTIVITY APPLICATIONS.

22. NOVELL incorporates by reference all other definitions in the Court's Uniform Instructions for Use in Discovery Requests. See L.R., App. D at 93-94, 99-101.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1:

In YOUR ANSWER to Paragraph No. 8 of the COMPLAINT, YOU alleged that "Novell mismanaged the development and marketing of WordPerfect." Please set forth the factual bases for this allegation, including the identity of all PERSONS who have knowledge of this allegation, and all DOCUMENTS concerning this allegation.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a

decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Any injury Novell may have suffered to WordPerfect or its other office productivity applications was caused entirely or in part by Novell's own mismanagement of the development and marketing of those applications. Novell's mismanagement of the development and marketing of WordPerfect included, without limitation, such errors as internal management decisions that

resulted in the late release of a version of WordPerfect for Windows 95, the decision to release a substantial portion of the WordPerfect sales force and entrust the marketing of WordPerfect to Novell salespersons who lacked the proper knowledge and contacts to market the product, the failure of Novell to effectively integrate WordPerfect employees into the Novell organization, the decision to change WordPerfect's policy of free customer support, and the creation of uncertainty and loss of customer support as a result of Novell's announcement that it would sell WordPerfect slightly more than a year after it purchased it.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: Bob Frankenberg, Eric Meyers, Pete Peterson, Greg Richardson and Ad Rietveld. As Novell is fully aware, Mr. Meyers testified about matters pertinent to Microsoft's response to this Interrogatory on September 28, 2001.

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Gordon v. Microsoft</i> , No. 00-5994, District Court of the State of Minnesota, Fourth Judicial District, DX 247
<i>Gordon v. Microsoft</i> , DX 1055 (MS-PCA 1730676 - 1730678)
<i>Gordon v. Microsoft</i> , DX 3146
<i>Gordon v. Microsoft</i> , DX 3147
<i>Gordon v. Microsoft</i> , DX 3148
J.C.C.P. No. 4106 (" <i>Microsoft I-V Cases</i> "), Superior Court of the State of California for the City and County of San Francisco, Deposition of Eric Meyers, September 28, 2001

Interrogatory No. 2:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part, by the statute of limitations." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS

who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was

adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: The parties have already litigated the question of whether Counts II through V of the Complaint are barred by the statute of limitations. The Court found these Counts were so barred (Op. of June 10, 2005), and the Fourth Circuit affirmed that holding. 505 F.3d 302 (4th Cir. 2007). It is Microsoft's expectation that, notwithstanding Novell's assertion that its remaining claims should benefit from the tolling provision in the Clayton Act, 15 U.S.C. § 16(i), the remaining two claims in this action will be revealed during the course of litigation as being connected primarily to office productivity applications and the office productivity applications market, and as such are also time-barred. Novell's claim involves different competitors, different

products that were allegedly injured and differences in the anticompetitive conduct alleged from that in the DOJ Complaint. Furthermore, the degree of market similarity between this case and the DOJ Complaint is slight, given that the DOJ Complaint is primarily focused on Microsoft's behavior with respect to Windows 98, an operating system that was released two years after Novell sold the products at issue in this case. It is also Microsoft's expectation that as this action proceeds any purported reliance on the Government Case by Novell will be revealed to be "a mere sham," thus rendering Novell ineligible to take advantage of the tolling provision in 15 U.S.C. § 16(i). *Leh v. General Petroleum Corp.*, 382 U.S. 54, 59 (1965).

Additionally, notwithstanding the above, it is Microsoft's position that Novell's contention that it is entitled to recover for all "harm" suffered after May 18, 1994 — four years prior to the filing of the DOJ Complaint — for "every act that Microsoft" committed "prior to" that date is fatally flawed. (Compl. ¶ 22.) Although antitrust law may allow a plaintiff in some circumstances to allege conduct prior to the limitations period in order to establish a defendant's liability, such law does not allow a plaintiff to recover for additional harm during the limitations period that results from such pre-period conduct. To the contrary, the right to recover all "damages that will flow in the future" from a given act accrues as soon as a plaintiff feels any adverse impact from that act. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 339 (1971).

Interrogatory No. 3:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part, by the doctrine of estoppel." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that

the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: In 1996 Novell sold its DR DOS business and with it all claims relating "directly or indirectly" to PC operating systems to Caldera Inc. ("Caldera"). (Asset Purchase Agreement ¶ 3.1.) As part of the sale to Caldera, Novell mandated that Caldera bring an antitrust suit against Microsoft seeking to recover for alleged harm to competition in the PC operating system market. In addition to mandating that action, Novell retained a substantial equity stake in the outcome of the suit and actually received a substantial portion (18%) of the payment Microsoft made in return for a full release. During the prosecution of that action, counsel for Novell made representations to the court about Novell's role and interest in the litigation. Additionally, it is Microsoft's expectation that as discovery proceeds it will become apparent that Novell

actively participated in the formulation and/or prosecution of the case and that Caldera and Novell were in privity or had a relationship of support or involvement in connection with Caldera's litigation with Microsoft that was akin to privity. For these and other reasons, the doctrine of estoppel bars Novell from asserting the claims in this action, and further bars Novell from taking a position regarding its role in the Caldera litigation that is inconsistent with that taken by Novell or any party in privity with Novell during the Caldera litigation.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: Steve Bentley, David Bradford, Craig Christensen, Bob Frankenberg, Paul Graf, Ransom Love, Bryan Sparks and Ralph Yarro. As Novell is fully aware, these persons testified about matters pertinent to Microsoft's response to this Interrogatory on July 18, 2001 (Bentley), July 17, 2001 (Bradford), March 15, 2002 (Christensen), November 28, 2001 (Frankenberg), December 6, 2001 (Graf), August 1, 2001 (Love), September 10, 2001 (Sparks), and September 26, 2001 (Yarro).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Caldera v. Microsoft</i> , No. 2:96-cv-645, U.S. District Court for the District of Utah, Settlement Agreement between Caldera and Microsoft, January 7, 2000
<i>Caldera v. Microsoft</i> , Transcript of Proceedings Before the Honorable Ronald N. Boyce, July 16, 1998
<i>Novell v. Canopy Group</i> , No. 000402011C, Fourth Judicial District Court of Utah County, Deposition of Steve Bentley, July 18, 2001
<i>Novell v. Canopy Group</i> , Deposition of David Bradford, July 17, 2001
<i>Novell v. Canopy Group</i> , Deposition of Craig Christensen, March 15, 2002
<i>Novell v. Canopy Group</i> , Deposition of Bob Frankenberg, November 28, 2001
<i>Novell v. Canopy Group</i> , Deposition of Paul J. Graf, December 6, 2001
<i>Novell v. Canopy Group</i> , Deposition of Robert Hicks, July 13, 2001

<i>Novell v. Canopy Group</i> , Deposition of Ransom H. Love, August 1, 2001
<i>Novell v. Canopy Group</i> , Deposition of Bryan W. Sparks, September 10, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ralph Yarro, September 26, 2001
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 28
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 43
<i>Novell v. Canopy Group</i> , Declaration of Bryan Sparks in Support of the Canopy Group Inc.'s Response to Novell, Inc.'s Motion for Summary Judgment, October 28, 2002
<i>Novell v. Canopy Group</i> , Opinion on Summary Judgment Motion, November 22, 2002 (Schofield, J.)
Asset Purchase Agreement between Novell and Caldera
Novell Cross Platform Services and Novell Products Source Code License Agreement

Interrogatory No. 4:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part, by the doctrine of waiver." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to

Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: In 1996 Novell sold its DR DOS business and with it all claims relating "directly or indirectly" to PC operating systems to Caldera. (Asset Purchase Agreement ¶ 3.1.) As part of the sale to Caldera, Novell mandated that Caldera bring an antitrust suit against Microsoft seeking to recover for alleged harm to competition in the PC operating system market. In addition to mandating that action, Novell retained a substantial equity stake in the outcome of the suit and actually received a substantial portion (18%) of the payment Microsoft made in return for a full release. During the prosecution of that action, counsel for Novell made representations to the court about Novell's role and interest in the litigation. Additionally, it is Microsoft's expectation that as discovery proceeds it will become apparent that Novell actively participated in the formulation and/or prosecution of the case and that Caldera and Novell were in privity or had a relationship of support or involvement in connection with Caldera's litigation with Microsoft that was akin to privity. For these and other reasons, the doctrine of waiver bars Novell from asserting the claims in this action.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: Steve Bentley, David Bradford, Craig Christensen, Bob Frankenberg, Paul Graf, Ransom Love, Bryan Sparks and Ralph Yarro. As Novell is fully aware, these persons testified about matters pertinent to Microsoft's response to this Interrogatory on July 18, 2001 (Bentley), July 17, 2001 (Bradford), March 15, 2002 (Christensen), November 28, 2001 (Frankenberg), December 6, 2001 (Graf), August 1, 2001 (Love), September 10, 2001 (Sparks), and September 26, 2001 (Yarro).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Caldera v. Microsoft</i> , Settlement Agreement between Caldera and Microsoft, January 7, 2000
<i>Caldera v. Microsoft</i> , Transcript of Proceedings Before the Honorable Ronald N. Boyce, July 16, 1998
<i>Novell v. Canopy Group</i> , Deposition of Steve Bentley, July 18, 2001
<i>Novell v. Canopy Group</i> , Deposition of David Bradford, July 17, 2001
<i>Novell v. Canopy Group</i> , Deposition of Craig Christensen, March 15, 2002
<i>Novell v. Canopy Group</i> , Deposition of Bob Frankenberg, November 28, 2001
<i>Novell v. Canopy Group</i> , Deposition of Paul J. Graf, December 6, 2001
<i>Novell v. Canopy Group</i> , Deposition of Robert Hicks, July 13, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ransom H. Love, August 1, 2001
<i>Novell v. Canopy Group</i> , Deposition of Bryan W. Sparks, September 10, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ralph Yarro, September 26, 2001
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 28
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 43
<i>Novell v. Canopy Group</i> , Declaration of Bryan Sparks in Support of the Canopy Group Inc.'s Response to Novell, Inc.'s Motion for Summary Judgment, October 28, 2002
<i>Novell v. Canopy Group</i> , Opinion on Summary Judgment Motion, November 22, 2002 (Schofield, J.)
Asset Purchase Agreement between Novell and Caldera
Novell Cross Platform Services and Novell Products Source Code License Agreement

Interrogatory No. 5:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part, because it does not have standing to assert those claims." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground

that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain

unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Microsoft has previously set forth its position that Novell's claims are barred, in whole or in part, because it does not have standing to assert those claims. *See* Microsoft's Memorandum in Support of Its Motion to Dismiss Novell's Complaint, dated January 7, 2005. Microsoft's Reply Memorandum in Support of Its Motion to Dismiss Novell's Complaint, dated March 10, 2005, Brief of Appellant Microsoft Corporation (4th Cir.), dated April 13, 2006, Response and Reply Brief of Appellant Microsoft Corporation (4th Cir.), dated June 19, 2006, Petition for a Writ of Certiorari (U.S. S. Ct.), dated January 9, 2008, and Reply Brief in Support of Petition for a Writ of Certiorari (U.S. S. Ct.), dated February 22, 2008.

It is Microsoft's position that Novell — for reasons including, without limitation, that it did not compete in the allegedly restrained PC operating system market, that there are other plaintiffs better situated to bring claims for this allegedly anticompetitive conduct, that Novell's injuries are too remote from the alleged anticompetitive conduct and harm to

competition, and that Novell has not suffered antitrust injury — lacks standing to bring the claims asserted in this action. Novell's injuries in this action are purely derivative of alleged harm to competition in a market in which it did not compete, and as such Novell lacks standing to assert these antitrust claims against Microsoft. *See Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519 (1983).

Interrogatory No. 6:

Do YOU contend that NOVELL knowingly sold its antitrust claims for injuries that YOU caused to WORDPERFECT by YOUR alleged anticompetitive activity? If so, please set forth the factual bases for this contention, including the identity of all PERSONS who have knowledge of this contention, and all DOCUMENTS concerning this contention.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory on the grounds that Microsoft

did not cause any injury to the WordPerfect application and that the only alleged anticompetitive activity at issue in this litigation is that relating to the market for PC operating systems. Microsoft further objects to this Interrogatory on the grounds that the phrase "knowingly sold" is vague and ambiguous.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on

Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Microsoft contends that Novell sold all claims or causes of action alleging harm to competition in the market for PC operating systems to Caldera in 1996, that Novell knew it was selling such claims and that the sale included any legally cognizable injuries, whether direct or indirect, to Novell arising from such claims or causes of action. Only the "real party in interest" may prosecute a claim, Fed. R. Civ. P. 17(a), and it is well-settled that a potential plaintiff loses its "real party" status by assigning its rights to sue to another entity. The asset purchase agreement between Novell and Caldera included any and all claims and causes of actions "associated directly or indirectly with" the PC operating system market. (Asset Purchase Agreement ¶ 3.1.) As such, Novell does not own the claims that it is asserting in this action.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: Steve Bentley, David Bradford, Craig Christensen, Bob Frankenberg, Paul Graf, Ransom Love, Bryan Sparks and Ralph Yarro. As Novell is fully aware, these persons testified about matters pertinent to Microsoft's response to this Interrogatory on July 18, 2001 (Bentley), July 17, 2001 (Bradford), March 15, 2002 (Christensen), November 28, 2001 (Frankenberg), December 6, 2001 (Graf), August 1, 2001 (Love), September 10, 2001 (Sparks), and September 26, 2001 (Yarro).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft

provides the following examples of some of the documents that may be responsive to

Novell's request:

<i>Caldera v. Microsoft</i> , Settlement Agreement between Caldera and Microsoft, January 7, 2000
<i>Caldera v. Microsoft</i> , Transcript of Proceedings Before the Honorable Ronald N. Boyce, July 16, 1998
<i>Novell v. Canopy Group</i> , Deposition of Steve Bentley, July 18, 2001
<i>Novell v. Canopy Group</i> , Deposition of David Bradford, July 17, 2001
<i>Novell v. Canopy Group</i> , Deposition of Craig Christensen, March 15, 2002
<i>Novell v. Canopy Group</i> , Deposition of Bob Frankenberg, November 28, 2001
<i>Novell v. Canopy Group</i> , Deposition of Paul J. Graf, December 6, 2001
<i>Novell v. Canopy Group</i> , Deposition of Robert Hicks, July 13, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ransom H. Love, August 1, 2001
<i>Novell v. Canopy Group</i> , Deposition of Bryan W. Sparks, September 10, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ralph Yarro, September 26, 2001
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 28
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 43
<i>Novell v. Canopy Group</i> , Declaration of Bryan Sparks in Support of the Canopy Group Inc.'s Response to Novell, Inc.'s Motion for Summary Judgment, October 28, 2002
<i>Novell v. Canopy Group</i> , Opinion on Summary Judgment Motion, November 22, 2002 (Schofield, J.)
Asset Purchase Agreement between Novell and Caldera
Novell Cross Platform Services and Novell Products Source Code License Agreement

Interrogatory No. 7:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part, because it did not suffer and cannot demonstrate any antitrust injury." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the

subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents

with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Microsoft has previously set forth its position that Novell's claims are barred, in whole or in part, because it did not suffer and cannot demonstrate any antitrust injury. See Microsoft's Memorandum in Support of Its Motion to Dismiss Novell's Complaint, dated January 7, 2005, Microsoft's Reply Memorandum in Support of Its Motion to Dismiss Novell's Complaint, dated March 10, 2005, Brief of Appellant Microsoft Corporation (4th Cir.), dated April 13, 2006, Response and Reply Brief of Appellant Microsoft Corporation (4th Cir.), dated June 19, 2006, Petition for a Writ of Certiorari (U.S. S. Ct.), dated January 9, 2008, and Reply Brief in Support of Petition for a Writ of Certiorari (U.S. S. Ct.), dated February 22, 2008.

Antitrust injury, which is "injury of the type the antitrust laws were intended to prevent and that flows from that which makes the defendants' acts unlawful," *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977), is a prerequisite of antitrust standing. Moreover, "[t]he antitrust injury requirement ensures that a plaintiff can recover only if the loss stems from a competition-reducing aspect or effect of the defendant's

behavior." *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 344 (1990). In contrast, Microsoft's development and distribution of an improved Windows operating system constituted procompetitive technological innovation. Inasmuch as Novell blames its alleged injury on the difficulties it had in developing applications for successive versions of Windows, it is complaining of injury from Microsoft's procompetitive activities. Accordingly, Novell lacks antitrust injury and does not have standing to bring these claims.

Interrogatory No. 8:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part [sic], by the doctrine of accord and satisfaction." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in

this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: In 1996 Novell sold its DR DOS business and with it all claims relating "directly or indirectly" to PC operating systems to Caldera. (Asset Purchase Agreement ¶ 3.1.) As part of the sale to Caldera, Novell mandated that Caldera bring an antitrust suit against Microsoft seeking to recover for alleged harm to competition in the PC operating system market. In addition to mandating that action, Novell retained a substantial equity stake in the outcome of the suit and actually received a substantial portion (18%) of the payment Microsoft made in return for a full release. During the prosecution of that action, counsel for Novell made representations to the court about Novell's role and interest in the litigation. Additionally, it is Microsoft's expectation that as discovery proceeds it will become apparent that Novell actively participated in the formulation and/or prosecution of the case and that Caldera and Novell were in privity or had a relationship of support or involvement in connection with Caldera's litigation with Microsoft that was akin to privity. By participating, directly or by proxy, in a case which resulted in a settlement and a full release, coupled with Novell's recovery of a significant portion of the payment made by Microsoft to settle the case with Caldera, Novell is now barred from bringing these claims. For these and other reasons, the doctrine of accord and satisfaction bars Novell's claims.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: Steve Bentley, David Bradford, Craig Christensen, Bob Frankenberg, Paul Graf, Ransom Love, Bryan Sparks and Ralph Yarro. As Novell is fully aware, these persons testified about matters pertinent to Microsoft's response to this Interrogatory on July 18, 2001 (Bentley), July 17, 2001 (Bradford), March 15, 2002

(Christensen), November 28, 2001 (Frankenberg), December 6, 2001 (Graf), August 1, 2001 (Love), September 10, 2001 (Sparks), and September 26, 2001 (Yarro).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Caldera v. Microsoft</i> , Settlement Agreement between Caldera and Microsoft, January 7, 2000
<i>Caldera v. Microsoft</i> , Transcript of Proceedings Before the Honorable Ronald N. Boyce, July 16, 1998
<i>Novell v. Canopy Group</i> , Deposition of Steve Bentley, July 18, 2001
<i>Novell v. Canopy Group</i> , Deposition of David Bradford, July 17, 2001
<i>Novell v. Canopy Group</i> , Deposition of Craig Christensen, March 15, 2002
<i>Novell v. Canopy Group</i> , Deposition of Bob Frankenberg, November 28, 2001
<i>Novell v. Canopy Group</i> , Deposition of Paul J. Graf, December 6, 2001
<i>Novell v. Canopy Group</i> , Deposition of Robert Hicks, July 13, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ransom H. Love, August 1, 2001
<i>Novell v. Canopy Group</i> , Deposition of Bryan W. Sparks, September 10, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ralph Yarro, September 26, 2001
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 28
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 43
<i>Novell v. Canopy Group</i> , Declaration of Bryan Sparks in Support of the Canopy Group Inc.'s Response to Novell, Inc.'s Motion for Summary Judgment, October 28, 2002
<i>Novell v. Canopy Group</i> , Opinion on Summary Judgment Motion, November 22, 2002 (Schofield, J.)
Asset Purchase Agreement between Novell and Caldera
Novell Cross Platform Services and Novell Products Source Code License Agreement

Interrogatory No. 9:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part [sic], by the doctrine of *res judicata*." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that

the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: In 1996 Novell sold its DR DOS business and with it all claims relating "directly or indirectly" to PC operating systems to Caldera. (Asset Purchase Agreement ¶ 3.1.) As part of the sale to Caldera, Novell mandated that Caldera bring an antitrust suit against Microsoft seeking to recover for alleged harm to competition in the PC operating system market. In addition to mandating that action, Novell retained a substantial equity stake in the outcome of the suit and actually received a substantial portion (18%) of the payment Microsoft made in return for a full release. During the prosecution of that action, counsel for Novell made representations to the court about Novell's role and interest in the litigation. Additionally, it is Microsoft's expectation that as discovery proceeds it will become apparent that Novell actively

participated in the formulation and/or prosecution of the case and that Caldera and Novell were in privity or had a relationship of support or involvement in connection with Caldera's litigation with Microsoft that was akin to privity. Further, the rule against claim splitting renders a second claim barred by the doctrine of *res judicata* when it is split from an earlier claim that has already been brought. For these and other reasons, the doctrine of *res judicata* bars Novell from asserting the claims in this action.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: Steve Bentley, David Bradford, Craig Christensen, Bob Frankenberg, Paul Graf, Ransom Love, Bryan Sparks and Ralph Yarro. As Novell is fully aware, these persons testified about matters pertinent to Microsoft's response to this Interrogatory on July 18, 2001 (Bentley), July 17, 2001 (Bradford), March 15, 2002 (Christensen), November 28, 2001 (Frankenberg), December 6, 2001 (Graf), August 1, 2001 (Love), September 10, 2001 (Sparks), and September 26, 2001 (Yarro).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Caldera v. Microsoft</i> , Settlement Agreement between Caldera and Microsoft, January 7, 2000
<i>Caldera v. Microsoft</i> , Transcript of Proceedings Before the Honorable Ronald N. Boyce, July 16, 1998
<i>Novell v. Canopy Group</i> , Deposition of Steve Bentley, July 18, 2001
<i>Novell v. Canopy Group</i> , Deposition of David Bradford, July 17, 2001
<i>Novell v. Canopy Group</i> , Deposition of Craig Christensen, March 15, 2002
<i>Novell v. Canopy Group</i> , Deposition of Bob Frankenberg, November 28, 2001
<i>Novell v. Canopy Group</i> , Deposition of Paul J. Graf, December 6, 2001
<i>Novell v. Canopy Group</i> , Deposition of Robert Hicks, July 13, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ransom H. Love, August 1, 2001

<i>Novell v. Canopy Group</i> , Deposition of Bryan W. Sparks, September 10, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ralph Yarro, September 26, 2001
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 28
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 43
<i>Novell v. Canopy Group</i> , Declaration of Bryan Sparks in Support of the Canopy Group, Inc.'s Response to Novell, Inc.'s Motion for Summary Judgment, October 28, 2002
<i>Novell v. Canopy Group</i> , Opinion on Summary Judgment Motion, November 22, 2002 (Schofield, J.)
Asset Purchase Agreement between Novell and Caldera
Novell Cross Platform Services and Novell Products Source Code License Agreement

Interrogatory No. 10:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part, [sic] by the doctrine of collateral estoppel." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to

Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: In 1996 Novell sold its DR DOS business and with it all claims relating "directly or indirectly" to PC operating systems to Caldera. (Asset Purchase Agreement ¶ 3.1.) As part of the sale to Caldera, Novell mandated that Caldera bring an antitrust suit against Microsoft seeking to recover for alleged harm to competition in the PC operating system market. In addition to mandating that action, Novell retained a substantial equity stake in the outcome of the suit and actually received a substantial portion (18%) of the payment Microsoft made in return for a full release. During the prosecution of that action, counsel for Novell made representations to the court about Novell's role and interest in the litigation. Additionally, it is Microsoft's expectation that as discovery proceeds it will become apparent that Novell actively participated in the formulation and/or prosecution of the case and that Caldera and Novell were in privity or had a relationship of support or involvement in connection with Caldera's litigation with Microsoft that was akin to privity. For these and other reasons, the doctrine of collateral estoppel bars Novell from asserting the claims in this action.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: Steve Bentley, David Bradford, Craig Christensen, Bob Frankenberg, Paul Graf, Ransom Love, Bryan Sparks and Ralph Yarro. As Novell is fully aware, these persons testified about matters pertinent to Microsoft's response to this Interrogatory on July 18, 2001 (Bentley), July 17, 2001 (Bradford), March 15, 2002 (Christensen), November 28, 2001 (Frankenberg), December 6, 2001 (Graf), August 1, 2001 (Love), September 10, 2001 (Sparks), and September 26, 2001 (Yarro).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Caldera v. Microsoft</i> , Settlement Agreement between Caldera and Microsoft, January 7, 2000
<i>Caldera v. Microsoft</i> , Transcript of Proceedings Before the Honorable Ronald N. Boyce, July 16, 1998
<i>Novell v. Canopy Group</i> , Deposition of Steve Bentley, July 18, 2001
<i>Novell v. Canopy Group</i> , Deposition of David Bradford, July 17, 2001
<i>Novell v. Canopy Group</i> , Deposition of Craig Christensen, March 15, 2002
<i>Novell v. Canopy Group</i> , Deposition of Bob Frankenberg, November 28, 2001
<i>Novell v. Canopy Group</i> , Deposition of Paul J. Graf, December 6, 2001
<i>Novell v. Canopy Group</i> , Deposition of Robert Hicks, July 13, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ransom H. Love, August 1, 2001
<i>Novell v. Canopy Group</i> , Deposition of Bryan W. Sparks, September 10, 2001
<i>Novell v. Canopy Group</i> , Deposition of Ralph Yarro, September 26, 2001
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 28
<i>Novell v. Canopy Group</i> , Bradford Dep. Exhibit 43
<i>Novell v. Canopy Group</i> , Declaration of Bryan Sparks in Support of the Canopy Group Inc.'s Response to Novell, Inc.'s Motion for Summary Judgment, October 28, 2002
<i>Novell v. Canopy Group</i> , Opinion on Summary Judgment Motion, November 22, 2002 (Schofield, J.)
Asset Purchase Agreement between Novell and Caldera
Novell Cross Platform Services and Novell Products Source Code License Agreement

Interrogatory No. 11:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part, because MICROSOFT'S conduct constitutes permissible competitive activity." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground

that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain

unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Microsoft's conduct constitutes permissible competitive activity because Microsoft's development and distribution of an improved Windows operating system constituted procompetitive technological innovation.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: James Allchin, Steven Ballmer, Bill Gates and Paul Maritz.

Interrogatory No. 12:

In YOUR ANSWER to the COMPLAINT, YOU asserted as an affirmative defense that "Novell's claims are barred, in whole or in part, by failure to mitigate damages." Please set forth the factual bases for this affirmative defense, including the identity of all PERSONS who have knowledge of this affirmative defense, and all DOCUMENTS concerning this affirmative defense.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is unduly burdensome. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding. Microsoft further objects to this Interrogatory to the extent that it calls for legal conclusions.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that

the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Even if it were true that Microsoft's actions vis-à-vis Windows harmed Novell by impairing its development of WordPerfect and other office productivity applications, Novell failed to adequately market those applications and failed to devote sufficient engineering resources to respond to technical challenges it faced in development. This would constitute failure to mitigate damages.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: Bob Frankenberg, Eric Meyers, Pete Peterson, Greg Richardson and Ad Rietveld. As Novell is fully aware, Mr. Meyers testified about matters pertinent to Microsoft's response to this Interrogatory on September 28, 2001.

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Gordon v. Microsoft</i> , DX 247
<i>Gordon v. Microsoft</i> , DX 1055 (MS-PCA 1730676 - 1730678)
<i>Gordon v. Microsoft</i> , DX 3146
<i>Gordon v. Microsoft</i> , DX 3147
<i>Gordon v. Microsoft</i> , DX 3148
<i>Microsoft I-V Cases</i> , Deposition of Eric Meyers, September 28, 2001

Interrogatory No. 13:

Do YOU contend that YOU limited the access that YOU provided to YOUR applications developers to APIs, specifications, or other technical information (including, but not limited to technical information concerning namespace extensions, shell extensions, or the iShell Browser) for Windows? If so, please IDENTIFY all PERSONS who have knowledge of those limitations, including PERSONS with knowledge of the reasons for granting such access, and all DOCUMENTS concerning those limitations.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to

Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Microsoft does not contend that it limited the access that it provided to its applications developers to APIs, specifications or other technical information for Windows. Microsoft does contend that it provided Novell sufficient access to APIs, specifications and other Windows technical information to allow Novell to develop high-quality Windows-compatible software that was fully capable of competing with office productivity applications developed by Microsoft.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: James Allchin, Steven Ballmer, William Gates, Paul Maritz, Cameron Myhrvold, Jeffrey Raikes, Brad Silverberg and Steven Sinofsky. As Novell is fully aware, Messrs. Ballmer, Gates, Maritz, Myhrvold, Raikes, Silverberg and Sinofsky testified about matters pertinent to Microsoft's response to this Interrogatory on May 2-3, 2002 (Ballmer), February 27, 2002 (Gates), October 24, 2001 (Maritz), September 5-6, 2001 (Myhrvold), October 17, 2001 (Raikes), May 7, 2002 (Silverberg), and September 24, 2001 (Sinofsky).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Microsoft I-V Cases, Deposition of Steven Ballmer, May 2, 2002</i>
<i>Microsoft I-V Cases, Deposition of Steven Ballmer, May 3, 2002</i>
<i>Microsoft I-V Cases, Deposition of William H. Gates, February 27, 2002</i>
<i>Microsoft I-V Cases, Deposition of Paul A. Maritz, October 24, 2001</i>
<i>Microsoft I-V Cases, Deposition of Cameron Myhrvold, September 5, 2001</i>
<i>Microsoft I-V Cases, Deposition of Cameron Myhrvold, September 6, 2001</i>
<i>Microsoft I-V Cases, Deposition of Jeffrey S. Raikes, October 17, 2001</i>

Microsoft I-V Cases, Deposition of Brad Silverberg, May 7, 2002
Microsoft I-V Cases, Deposition of Steven Sinofsky, September 24, 2001
Microsoft I-V Cases, Gates Dep. Exhibit 6 (MS-PCA 7077910)
Microsoft I-V Cases, Gates Dep. Exhibit 7 (MS-PCA 1139462)
Microsoft I-V Cases, Maritz Dep. Exhibit 68 (MS 5035892 - 5035894)
Microsoft I-V Cases, Myhrvold Dep. Exhibit 34 (MS 5047520)
Microsoft I-V Cases, Myhrvold Dep. Exhibit 40 (X 553564 - 553565)
Microsoft I-V Cases, Myhrvold Dep. Exhibit 53 (MS 5040157)
Microsoft I-V Cases, Silverberg Dep. Exhibit 124 (FL AG 0101912 - 0101914)

Interrogatory No. 14:

Do YOU contend that YOU provided to all ISVs the same access to APIs, specifications or other technical information for Windows that YOU provided to YOUR applications developers? If not, please IDENTIFY all PERSONS who have knowledge of any limitations that YOU imposed on ISV access, and all DOCUMENTS concerning those limitations.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to

Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Microsoft does not contend that it provided to all ISVs the same access to APIs, specifications or other technical information for Windows that it provided to its applications developers. Microsoft does contend that it provided Novell sufficient access to APIs, specifications and other Windows technical information to allow Novell to develop high-quality Windows-compatible software that was fully capable of competing with office productivity applications developed by Microsoft.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: James Allchin, Steven Ballmer, Jon DeVaen, William Gates, Paul Maritz, Cameron Myhrvold, Jeffrey Raikes, Brad Silverberg and Steven Sinofsky. As Novell is fully aware, these persons testified about matters pertinent to Microsoft's response to this Interrogatory on July 31, 2002 (Allchin), May 2-3, 2002 (Ballmer), June 19, 2001 (DeVaen), February 27, 2002 (Gates), October 24-26, 2001 (Maritz), September 5-6, 2001 (Myhrvold), October 17, 2001 (Raikes), February 13, 2002 (Silverberg), May 7, 2002 (Silverberg), and September 24, 2001 (Sinofsky).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Microsoft I-V Cases, Deposition of Steven Ballmer, May 2, 2002</i>
<i>Microsoft I-V Cases, Deposition of Steven Ballmer, May 3, 2002</i>
<i>Microsoft I-V Cases, Deposition of Jon Steven DeVaen, June 19, 2001</i>
<i>Microsoft I-V Cases, Deposition of William H. Gates, February 27, 2002</i>
<i>Microsoft I-V Cases, Deposition of Paul A. Maritz, October 24, 2001</i>

Microsoft I-V Cases, Deposition of Paul A. Maritz, October 25, 2001
Microsoft I-V Cases, Deposition of Paul A. Maritz, October 26, 2001
Microsoft I-V Cases, Deposition of Cameron Myhrvold, September 5, 2001
Microsoft I-V Cases, Deposition of Cameron Myhrvold, September 6, 2001
Microsoft I-V Cases, Deposition of Jeffery S. Raikes, October 17, 2001
Microsoft I-V Cases, Deposition of Brad Silverberg, February 13, 2002
Microsoft I-V Cases, Deposition of Brad Silverberg, May 7, 2002
Microsoft I-V Cases, Deposition of Steven Sinofsky, September 24, 2001
Microsoft I-V Cases, DeVaan Dep. Exhibit 9 (MS 5047499)
Microsoft I-V Cases, Gates Dep. Exhibit 1 (MS 5048442 - 5048452)
Microsoft I-V Cases, Gates Dep. Exhibit 4 (MS 5025271)
Microsoft I-V Cases, Gates Dep. Exhibit 14 (MS 7089819 - 7089820)
Microsoft I-V Cases, Maritz Dep. Exhibit 10 (MS 0107754)
Microsoft I-V Cases, Maritz Dep. Exhibit 32 (MS 5025386)
Microsoft I-V Cases, Maritz Dep. Exhibit 33 (MS 0150656)
Microsoft I-V Cases, Myhrvold Dep. Exhibit 34 (MS 5047520)
Microsoft I-V Cases, Myhrvold Dep. Exhibit 40 (X 553564 - 553565)
Microsoft I-V Cases, Silverberg Dep. Exhibit 43 (MS 5062504 - 5062509)
Microsoft I-V Cases, Silverberg Dep. Exhibit 124 (MS 5062692)
Microsoft I-V Cases, Silverberg Dep. Exhibit 115 (MSC 00776145)
Microsoft I-V Cases, Sinofsky Dep. Exhibit 7 (MS 0150654 - 0150655)
Sun Microsystems v. Microsoft, Deposition of James Allchin, July 31, 2002

Interrogatory No. 15:

Do YOU contend that YOU provided equal access to all ISVs to BETA RELEASES or interim builds, or other technical information, for all Windows releases or contemplated releases from 1990 through 1996? If not, please IDENTIFY the ISVs to which YOU limited access in any manner, IDENTIFY PERSONS with knowledge of such limitations, and all DOCUMENTS concerning such limitations including DOCUMENTS concerning the reasons for such limitations.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all" DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably

calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that it seeks information in the possession, custody or control of Novell or of third parties from whom it is equally or more accessible. Microsoft further objects to this Interrogatory on the ground that the information sought can be obtained through other means that are more convenient, less burdensome or less expensive, including through a review of the documents and evidence from prior actions that have been provided to Novell, and through other means of discovery and the testimony of witnesses to be taken in this proceeding.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy

set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Microsoft does not contend that it provided equal access to all ISVs to beta releases, interim builds or other technical information for all Windows releases or contemplated releases from 1990 through 1996. Microsoft does contend that it provided Novell sufficient access to beta releases, interim builds and other technical information for all Windows releases or contemplated releases from 1990 through 1996 to allow Novell to develop high-quality Windows-compatible software that was fully capable of competing with office productivity applications developed by Microsoft.

Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to: James Allchin, Steven Ballmer, Brad Chase, Paul Maritz, Cameron Myhrvold and Jeffrey Raikes. As Novell is fully aware, Messrs. Ballmer, Chase, Maritz, Myhrvold and Raikes testified about matters pertinent to Microsoft's response to this Interrogatory on May 2, 2002 (Ballmer), October 10, 2001 (Chase), October 24 and 26, 2001 (Maritz), September 5, 2001 (Myhrvold), and November 2, 2001 (Raikes).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft

provides the following examples of some of the documents that may be responsive to

Novell's request:

<i>Microsoft I-V Cases, Deposition of Steven Ballmer, May 2, 2002</i>
<i>Microsoft I-V Cases, Deposition of Bradley Chase, October 10, 2001</i>
<i>Microsoft I-V Cases, Deposition of Paul A. Maritz, October 24, 2001</i>
<i>Microsoft I-V Cases, Deposition of Paul A. Maritz, October 26, 2001</i>
<i>Microsoft I-V Cases, Deposition of Cameron Myhrvold, September 5, 2001</i>
<i>Microsoft I-V Cases, Deposition of Jeffery S. Rakes, November 2, 2001</i>
<i>Microsoft I-V Cases, Deposition of Brad Silverberg, February 13, 2002</i>
<i>Microsoft I-V Cases, Deposition of Brad Silverberg, February 14, 2002</i>
<i>Microsoft I-V Cases, Chase Dep. Exhibit 100 (MS 5064527 - 5064528)</i>
<i>Microsoft I-V Cases, Maritz Dep. Exhibit 70 (MS 5042853 - 5042855)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 5 (MS 5062393 - 5062398)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 53 (MS 7039637)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 54 (MS 7039421)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 55 (MSC00208845)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 56 (MS 7095504 - 7095508)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 58 (MS 7083705)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 59 (MS 7086114)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 60 (MS 7085628 - 7085629)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 61 (MS 7085655)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 62 (MS 7086117 - 7086119)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 63 (MS 7085708)</i>
<i>Microsoft I-V Cases, Silverberg Dep. Exhibit 64 (MS 7085229 - 7085230)</i>

Interrogatory No. 16:

IDENTIFY all DOCUMENTS concerning, and all current or former MICROSOFT employees with responsibility for communicating or negotiating with, or deciding whether to grant or deny licenses to, OEMs, independent retailers, independent or loosely affiliated resellers, and direct sales customers, for the distribution and sale of MICROSOFT'S PC operating systems or MICROSOFT'S OFFICE PRODUCTIVITY APPLICATIONS.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is vague, ambiguous, overly broad and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the

ground that the request for the identification of "all" DOCUMENTS and current or former MICROSOFT employees relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Identifying all such employees would entail the identification of literally thousands of people who worked at Microsoft over the last 18 years — information that is not readily ascertainable and that would be incredibly burdensome to collect, particularly given that Microsoft does not maintain a central repository for such information. Microsoft further objects to this Interrogatory to the extent that it seeks to require Microsoft to identify specific documents within the documents that have already been provided to plaintiff. In light of the discovery already provided to plaintiff, it would be unduly burdensome and expensive to require Microsoft to re-review and identify specific previously produced documents or individuals who may be identified from such documents. Microsoft believes that such information may be derived or ascertained from the searchable and coded database provided to Novell by the *Comes* plaintiffs and that the burden of deriving or ascertaining such information for the period at issue will be substantially the same for Novell as it would be for Microsoft.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was

adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Based on its investigation to date, Microsoft believes that persons responsive to this Interrogatory include, but are not limited to, Bengt Akerlind, Steven Ballmer, William Gates, Joachim Kempin and Jeffrey Raikes. As Novell is fully aware, these persons testified about matters pertinent to Microsoft's response to this Interrogatory on August 22-23, 2001 (Akerlind), May 2, 2002 (Ballmer), September 30, 2002 (Ballmer), February 27, 2002 (Gates), January 22, 2002 (Kempin), and November 2, 2001 (Raikes).

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft

provides the following examples of some of the documents that may be responsive to Novell's request:

<i>Microsoft I-V Cases, Deposition of Bengt Akerlind, August 22, 2001</i>
<i>Microsoft I-V Cases, Deposition of Bengt Akerlind, August 23, 2001</i>
<i>Microsoft I-V Cases, Deposition of Steven Ballmer, May 2, 2002</i>
<i>Microsoft I-V Cases, Deposition of William H. Gates, February 27, 2002</i>
<i>Microsoft I-V Cases, Deposition of Joachim Kempin, January 22, 2002</i>
<i>Microsoft I-V Cases, Deposition of Jeffery S. Raikes, November 2, 2001</i>
<i>Microsoft I-V Cases, Akerlind Dep. Exhibit 5 (MS AG 0001992 - 0002012)</i>
<i>Microsoft I-V Cases, Akerlind Dep. Exhibit 6 (MS 0138458 - 0138464)</i>
<i>Microsoft I-V Cases, Akerlind Dep. Exhibit 7 (MS-PCA 1580216 - 1580221)</i>
<i>Microsoft I-V Cases, Akerlind Dep. Exhibit 13 (MS 0031351 - 0031354)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 1 (X 217735 - 217746)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 3 (MS-PCA 1420150)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 4 (MS-PCA 1961490 - 1961491)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 5 (FL AG 0001632 - 0001690)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 10 (MS-PCA 1250798 - 1250802)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 21 (MS-PCA 1180530 - 1180712)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 25 (MS-PCA 1483388 - 1483391)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 27 (X 169879 - 169882)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 34 (FL AG 0031352 - 0031354)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 39 (X 217626 - 217640)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 64 (MS98 0185793 - 0185805)</i>
<i>Microsoft I-V Cases, Kempin Dep. Exhibit 65 (MS98 0183013 - 0183027)</i>
<i>Microsoft I-V Cases, Raikes Dep. Exhibit 47 (FL AG 0103750 - 0103756)</i>
<i>Microsoft I-V Cases, Raikes Dep. Exhibit 77 (MS-PCA 1284458 - 1284479)</i>
<i>Microsoft I-V Cases, Raikes Dep. Exhibit 79 (MS 0142581 - 0142609)</i>
<i>Microsoft v. Lindows.com, Deposition of Steven Ballmer, September 30, 2002</i>

Interrogatory No. 17:

IDENTIFY all PERSONS responsible for setting the conditions necessary to obtain the Windows 95 logo certification from MICROSOFT, and all DOCUMENTS that set forth those conditions, the reasons for those conditions, any conditions that YOU considered and rejected (including requirements for interoperability with Object Linking and Embedding ("OLE") technology or Windows NT compatibility), and the identity of PERSONS responsible for deciding whether to grant the Windows 95 logo certification.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground

that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that the request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Identifying all such PERSONS would entail the identification of a quite possibly large number of people who worked at Microsoft over 13 years ago — information that is not readily ascertainable and that would be incredibly burdensome to collect, particularly given that Microsoft does not maintain a central repository for such information. Microsoft further objects to this Interrogatory to the extent that it seeks to require Microsoft to identify specific documents within the documents that have already been provided to plaintiff. In light of the discovery already provided to plaintiff, it would be unduly burdensome and expensive to require Microsoft to re-review and identify specific previously produced documents or individuals who may be identified from such documents. Microsoft believes that such information may be derived or ascertained from the searchable and coded database provided to Novell by the *Comes* plaintiffs and that the burden of deriving or ascertaining such information for the period at issue will be substantially the same for Novell as it would be for Microsoft.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to

move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Based on its investigation to date, Microsoft believes that persons responsive to this Interrogatory include, but are not limited to, Brad Chase, John Ludwig and Brad Silverberg.

Given the foregoing objections, Microsoft has not undertaken a systematic effort to identify all documents responsive to this Interrogatory. For Novell's benefit, Microsoft provides the following example of a document that may be responsive to Novell's request:

Microsoft I-V Cases, Deposition of Bengt Akerlind, August 23, 2001

Interrogatory No. 18:

IDENTIFY all PERSONS who have knowledge of, and all DOCUMENTS concerning MICROSOFT'S efforts to request, collect and preserve DOCUMENTS relevant to the COMPLAINT or ANSWER, and with respect to each PERSON identified, describe the relevant knowledge that he or she possesses.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that the request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that prior to the filing of the Complaint in this action in November 2004, it had already requested, collected and preserved all documents relating to the Complaint and Answer in connection with numerous prior federal and state proceedings containing allegations similar to the factual allegations of the Complaint and that such documents have been provided to plaintiff. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following response to this Interrogatory: The principal persons with relevant knowledge of whom Microsoft is presently aware are Steven Aeschbacher, Joe Banks, Thomas Burt and Lori Collins. These persons have knowledge of Microsoft's efforts to request, collect and preserve documents relevant to the Complaint and Answer filed in this action.

Interrogatory No. 19:

IDENTIFY all PERSONS who have knowledge of, and all DOCUMENTS concerning actual or potential problems, bugs, or defects — and the resolution of [sic] non-resolution of those problems, bugs or defects — that YOUR OFFICE PRODUCTIVITY APPLICATIONS and competing OFFICE PRODUCTIVITY APPLICATIONS experienced running on Windows 95 and pre-release versions of Windows 95.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that the request for the identification of "all" PERSONS and DOCUMENTS relating to the subject matter thereof is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Identifying all such PERSONS would entail the identification of a quite possibly large number of people who worked at Microsoft 13 years ago or more — information that is not readily ascertainable and that would be highly burdensome to collect, particularly given that Microsoft does not maintain and has never maintained a central repository for such information. Microsoft further objects to this Interrogatory to the extent that it seeks to require Microsoft to identify specific documents within the documents that have already been provided to plaintiff. In light of the discovery already provided to plaintiff, it would be unduly burdensome and expensive to require Microsoft to re-review and identify specific previously produced documents or individuals who may be identified from such documents. Microsoft believes that such information may be derived or ascertained from the searchable and coded database provided to Novell by the *Comes* plaintiffs and that the burden of deriving

or ascertaining such information for the period at issue will be substantially the same for Novell as it would be for Microsoft.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to, James Allchin, Jon DeVaan, Paul Maritz and Brad Silverberg.

Interrogatory No. 20:

IDENTIFY all PERSONS who are likely to have personal knowledge of any fact alleged in YOUR Answer and state the subject matter of the personal knowledge possessed by each such person.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Interrogatory on the ground that its request for the identification of "all PERSONS who are likely to have personal knowledge of any fact" alleged in Microsoft's Answer is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Interrogatory on the ground that the information sought may be derived or ascertained from the searchable and coded database provided to Novell by the *Comes* plaintiffs and that the burden of deriving or ascertaining such information for the period at issue will be substantially the same for Novell as it would be for Microsoft.

Microsoft further objects to this Interrogatory on the ground that it is premature. Discovery in this case has barely begun, and due to Novell's insistence on a prolonged period for discovery, trial is still more than two years away. Novell's alleged injury occurred over a decade ago, and Novell waited nine years after it sold the allegedly harmed office productivity applications to file this suit. In the nearly three years since, Novell has made no effort to

move this case forward with speed or diligence, but to the contrary has repeatedly endeavored to slow the process of this litigation. Novell's proposed discovery schedule, which was adopted by the Court, is substantially longer than that proposed by Microsoft and requires that the parties engage in discovery into 2009. Additionally, Novell has to date provided only minimal production of documents despite the fact that Microsoft's First Request for Production was served in 2005, and many of Microsoft's document requests remain unaddressed. Indeed, even when Novell made a partial response, its efforts were far from adequate. Novell at first produced only a small number of unorganized electronic documents with no custodian or other identifying information. Later, when Novell produced 485 boxes of purportedly responsive hard-copy documents, it refused to provide Microsoft with a copy set of those documents, required counsel for Microsoft to travel to Washington, D.C. to review them, and made no effort to determine which of those documents were responsive to Microsoft's document requests. As such, it is inappropriate to serve this Interrogatory on Microsoft at this time. Microsoft reserves the right to respond to this Interrogatory on an ongoing basis, up to and including the first day of trial.

Subject to and without waiving the foregoing objections, Microsoft provides the following as an initial, but by no means complete, response to this Interrogatory: Based on its investigation to date, Microsoft believes that persons with relevant knowledge include, but are not limited to, those persons identified in Microsoft's responses to Interrogatory Nos. 1-17 and 19 herein.

RESPONSES TO DOCUMENT REQUESTS

Document Request No. 1:

Please produce in electronic form documents sufficient to show YOUR sales from 1985 through 2000, of MICROSOFT Word, Excel, PowerPoint, Access, Office, and Outlook for any released version of MS-DOS and Windows, on a line item or transaction basis, by customer name, along with the date of the invoice, complete description of each product, unit price, discounts (if any), rebates (if any), description of the location to which the product was shipped, the total price of the product sold, and the distribution channel through which YOU sold the product (e.g., OEM sales, retail sales). Please also produce with this data documents sufficient to operate, read, and run the programs maintained on the computer-related equipment or system that you used to maintain this data.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and produced documents in accordance with its objections to such prior requests, agreements with counsel and court orders in prior proceedings. For example, Microsoft responded to similar requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request Nos. 1, 2, 3 and 6 of the Plaintiffs' First Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000, and Requests Nos. 23 and 27 of Plaintiffs' Second Requests for Production of Documents to Defendant Microsoft Corporation, dated September 12, 2000; (b) the *Comes* action, *see, e.g.*, Request Nos. 1, 4, 5, 6 and 8 of the Plaintiffs' First Set of Requests for Production of Documents to Defendant Microsoft Corporation, dated October 24, 2003; and (c) *Microsoft I-V Cases*, J.C.C.P. No. 4106 (Cal. Super. Ct.), *see, e.g.*, Request Nos. 3, 9 and 11 of Plaintiffs'

First Request for Production of Documents to Defendant Microsoft Corporation, dated May 5, 1999.

Subject to and without waiving the foregoing objections, Microsoft provides the following response to this Request: Microsoft believes that the *Comes* database now in plaintiff's possession contains documents sufficient to respond to this Request at a minimum with regard to sales from July 1993 to 2000. In prior litigation, Microsoft produced in compact-disc format several data sets from its MS Sales database that contained the sales data requested by Novell. See MSM 000262, MSM 000249 - 000250, MSM 000335 - 000336, MSM IA 088, MSM IA 194.

Document Request No. 2:

Please produce documents concerning sales of any OFFICE PRODUCTIVITY APPLICATIONS competing with MICROSOFT Word, Excel, or Office. Please include any documents that show how YOU collected this information.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, see, e.g., Request Nos. 1, 2, 3, 4, 5, and 42 of the Plaintiffs' First Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000, and Requests Nos. 2 and

3 of the Plaintiffs' Eighth Request for Production of Documents and Things to Defendant Microsoft Corporation, dated June 6, 2002; (b) the *Comes* action, *see, e.g.*, Request No. 61 of the Plaintiffs' Second Set of Requests for Production of Documents, dated September 22, 2004, and Request No. 107 of Plaintiffs' Fourth Set of Requests for Production, dated November 23, 2005; and (c) *Microsoft I-V Cases*, *see, e.g.*, Request Nos. 4 and 12 of Plaintiffs' First Request for Production of Documents to Defendant Microsoft Corporation, dated May 16, 1999, Request Nos. 1, 2, 3, 4, 5, 6, 10 and 11 of Plaintiffs' Second Request for Production of Documents to Defendant Microsoft Corporation, dated June 1, 2000, and Request No. 67 of Plaintiffs' Request for Production of Documents (Set No. Four), dated November 28, 2000.

Document Request No. 3:

Please produce documents concerning market share computations that YOU created, reported, or collected for any OFFICE PRODUCTIVITY APPLICATIONS.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request Nos. 9, 10 and 11 of the Plaintiffs' First Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000; (b) the *Comes* action,

see, e.g., Request Nos. 100, 101 and 105 of Plaintiffs' Fourth Set of Requests for Production, dated November 23, 2005; and (c) *Microsoft I-V Cases*, *see, e.g.*, Request Nos. 1, 2, 3, 4, 5, 6, 7, 10 and 11 of Plaintiffs' Second Request for Production of Documents to Defendant Microsoft Corporation, dated June 1, 2000, Request Nos. 62, 67 and 70 of Plaintiffs' Request for Production of Documents (Set No. Four), dated November 28, 2000, Request Nos. 95 and 97 of Plaintiff's Tenth Request for Production of Documents to Defendant Microsoft Corporation, dated May 3, 2002.

Document Request No. 4:

Please produce any valuation studies that YOU performed or received regarding any OFFICE PRODUCTIVITY APPLICATIONS.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request Nos. 1, 2, 3, 4, 6, 13, 14, and 15 of Plaintiffs' First Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000, Request Nos. 1, 2, 3, and 5 of Plaintiffs' Eighth Requests for Production of Documents and Things to Defendant Microsoft Corporation, dated June 6, 2002, and Request Nos. 6, 7, 11 and 15 of Plaintiffs' Ninth Request for Production of Documents and Things to Defendant Microsoft Corporation,

dated June 14, 2002; and (b) *Microsoft I-V Cases*, *see, e.g.*, Request Nos. 1, 2, 3, 4, 12 and 14 of Plaintiffs' Second Request for Production of Documents to Defendant Microsoft Corporation, dated June 1, 2000, and Request 35, 36, 37, 38, 40, 41, 43, 44, and 47 of Plaintiffs' Request for Production of Documents (Set No. Four), dated November 28, 2000.

Document Request No. 5:

Please produce any strategy documents, competitive studies, or similar market reports, including forecasts, market performance, and product comparisons, that YOU created or collected regarding any OFFICE PRODUCTIVITY APPLICATIONS.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request Nos. 4, 5, 6, 32, 35 and 42 of Plaintiffs' First Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000, and Request Nos. 1, 2, 3, 4 and 5 of Plaintiffs' Second Requests for Production of Documents to Defendant Microsoft Corporation, dated September 12, 2000; (b) the *Comes* action, *see, e.g.*, Request Nos. 107 and 108 of Plaintiffs' Fourth Set of Requests for Production from Defendant Microsoft Corporation, dated November 23, 2005, Request No. 175 of Plaintiffs' Seventh Set of Requests for Production from Defendant Microsoft Corporation, dated March 13, 2006; and

(c) *Microsoft I-V Cases*, see, e.g., Request Nos. 3, 9, 10, 11 and 12 of Plaintiffs' First Request for Production of Document to Defendant Microsoft Corporation, dated May 6, 1999, Request Nos. 1, 2, 3, 4, 5, 6, 10 and 11 of Plaintiffs' Second Request for Production of Documents to Defendant Microsoft Corporation, dated June 1, 2000, Request Nos. 41, 53, 56, 57, 62, 63, 64, 66, 67 and 70 of Plaintiffs' Request for Production of Documents (Set No. Four), dated November 28, 2000, and Request Nos. 95 and 97 of Plaintiffs' Tenth Request for Production of Documents to Defendant Microsoft Corporation, dated May 3, 2002.

Document Request No. 6:

Please produce transcripts of depositions or interviews (including interviews with government officials or pursuant to cooperation agreements), including exhibits, concerning claims that YOU actually or attempted to monopolize the market for PC operating systems or the market for OFFICE PRODUCTIVITY APPLICATIONS.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, see, e.g., Request Nos. 3 and 4 of Plaintiffs' Fourth Set of Requests for Production of Documents and Things to Defendant Microsoft Corporation, dated March 26, 2002; (b) the *Comes* action, see, e.g., Request No. 50 of Plaintiffs' First Set of Requests for Production from Defendant Microsoft Corporation, dated October 24, 2003, Request Nos. 62, 64 and 66

of Plaintiffs' Second Set of Requests for Production from Defendant Microsoft Corporation, dated September 22, 2004, and Request Nos. 112, 120 and 140 of Plaintiffs' Fifth Set of Requests for Production from Defendant Microsoft Corporation, dated December 22, 2005; and (c) *Microsoft I-V Cases*, *see, e.g.*, Request No. 1 of Plaintiffs' First Request for Production of Document to Defendant Microsoft Corporation, dated May 6, 1999, and Request No. 96 of Plaintiffs' Tenth Request for Production of Documents to Defendant Microsoft Corporation, dated May 3, 2002.

Document Request No. 7:

Please produce transcripts of depositions or interviews (including interviews with government officials or pursuant to cooperation agreements), including exhibits, of any third parties which relate to claims that YOU actually or attempted to monopolize the market for PC operating systems or the market for OFFICE PRODUCTIVITY APPLICATIONS.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request Nos. 3 and 4 of Plaintiffs' Fourth Set of Requests for Production of Documents and Things to Defendant Microsoft Corporation, dated March 26, 2002; (b) the *Comes* action, *see, e.g.*, Request Nos. 62, 64 and 66 of Plaintiffs' Second Set of Requests for Production from Defendant Microsoft Corporation, dated September 22, 2004; and (c)

Microsoft I-V Cases, *see, e.g.*, Request No. 1 of Plaintiffs' First Request for Production of Document to Defendant Microsoft Corporation, dated May 6, 1999, and Request No. 96 of Plaintiffs' Tenth Request for Production of Documents to Defendant Microsoft Corporation, dated May 3, 2002.

Document Request No. 8:

Please produce transcripts of depositions or interviews, including exhibits, of any employees or former employees of WORDPERFECT CORP., BORLAND, or NOVELL.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request Nos. 3 and 4 of Plaintiffs' Fourth Set of Requests for Production of Documents and Things to Defendant Microsoft Corporation, dated March 26, 2002; (b) the *Comes* action, *see, e.g.*, Request Nos. 62, 64 and 66 of Plaintiffs' Second Set of Requests for Production from Defendant Microsoft Corporation, dated September 22, 2004; and (c) *Microsoft I-V Cases*, *see, e.g.*, Request No. 1 of Plaintiffs' First Request for Production of Document to Defendant Microsoft Corporation, dated May 6, 1999, and Request No. 96 of Plaintiffs' Tenth Request for Production of Documents to Defendant Microsoft Corporation, dated May 3, 2002.

Document Request No. 2:

Please produce DOCUMENTS that YOU obtained directly or indirectly from either NOVELL, CALDERA, or WORDPERFECT CORP. in connection with OTHER ACTIONS, including the document requests and/or subpoenas pursuant to which YOU obtained those DOCUMENTS, and the dates when, and formats in which, YOU received the DOCUMENTS.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request No. 42 of Plaintiffs' First Set of Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000, and Request No. 1 of Plaintiffs' Fourth Set of Requests for Production of Documents and Things to Defendant Microsoft Corporation, dated March 26, 2002; and (b) the *Comes* action, *see, e.g.*, Request Nos. 62 and 63 of Plaintiffs' Second Set of Requests for Production from Defendant Microsoft Corporation, dated September 22, 2004.

Microsoft further objects to this Request to the extent that it requests documents that Microsoft received from Novell. Novell presumably is aware of the documents that it has produced in prior litigation and was fully capable of retaining those documents. It is not and

has never been Microsoft's responsibility to act as a depository of Novell's documents and to retain them for Novell's convenience.

Document Request No. 10:

Please produce DOCUMENTS sufficient to show (a) the ISVs to which you provided APIs, BETA RELEASES or interim builds, (b) the dates you provided such APIs, BETA RELEASES, or interim builds, and (c) the APIs, BETA RELEASES, or interim builds that you provided.

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request Nos. 25 and 26 of Plaintiffs' First Set of Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000; (b) the *Comes* action, *see, e.g.*, Request Nos. 30, 34 and 35 of Plaintiffs' First Set of Requests for Production from Defendant Microsoft Corporation, dated October 24, 2003, and Request Nos. 127, 128 and 129 of Plaintiffs' Fifth Set of Requests for Production from Defendant Microsoft Corporation, dated December 22, 2005; and (c) *Microsoft I-V Cases*, *see, e.g.*, Request Nos. 23, 24, 25, 26 and 32 of Plaintiffs' Second Request for Production of Documents to Defendant Microsoft Corporation, dated June 1, 2000.

Document Request No. 11:

Please produce DOCUMENTS concerning the actual or proposed terms for licenses that YOU granted, or offered, to OEMs for (a) PC operating systems, (b) Word, and/or (c) Excel, including any related benefits that YOU offered or withheld (e.g., market development funds).

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request Nos. 7 and 30 of Plaintiffs' First Set of Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000, and Request Nos. 33 and 34 of Plaintiffs' Second Request for Production of Documents from Defendant Microsoft Corporation, dated September 12, 2000; (b) the *Comes* action, *see, e.g.*, Request No. 48 of Plaintiffs' First Set of Requests for Production from Defendant Microsoft Corporation, dated October 24, 2003, Request No. 70 of Plaintiffs' Second Set of Requests for Production from Defendant Microsoft Corporation, dated September 22, 2004, Request No. 95 of Plaintiffs' Third Set of Requests for Production from Defendant Microsoft Corporation, dated September 29, 2005, Request No. 135 of Plaintiffs' Fifth Set of Requests for Production from Defendant Microsoft Corporation, dated December 22, 2005, and Request No. 165 of Plaintiffs' Seventh Set of Requests for Production from Defendant Microsoft Corporation,

dated March 13, 2006; and (c) *Microsoft I-V Cases*, see, e.g., Request No. 3 of Plaintiffs' First Request for Production of Document to Defendant Microsoft Corporation, dated May 6, 1999.

Document Request No. 12:

Please produce DOCUMENTS concerning the actual or proposed terms for licenses that YOU granted, or offered, to DISTRIBUTORS for (a) PC operating systems, (b) Word, or (c) Excel, including any related benefits that YOU offered or withheld (e.g., market development funds).

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, see, e.g., Request No. 30 of Plaintiffs' First Set of Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000, and Request Nos. 24, 28 and 30 of Plaintiffs' Second Request for Production of Documents from Defendant Microsoft Corporation, dated September 12, 2000; (b) the *Comes* action, see, e.g., Request No. 137 of Plaintiffs' Fifth Set of Requests for Production from Defendant Microsoft Corporation, dated December 22, 2005; and (c) *Microsoft I-V Cases*, see, e.g., Request Nos. 3 and 4 of Plaintiffs' First Request for Production of Document to Defendant Microsoft Corporation, dated May 6, 1999, and Request Nos. 8, 21 and 28 of Plaintiffs' Second Request for Production of Documents to Defendant Microsoft Corporation, dated June 1, 2000.

Document Request No. 13:

Please produce all DOCUMENTS concerning the Systems Retreat held at Hood Canal from June 10 to June 12, 1993, including (a) the "list of Points of Light" and "the memo that outlines many areas an application can potentially leverage within Chicago" to which Steven Sinofsky referred in his June 8, 1993 memo (*Comes v. Microsoft* Plaintiff's Exhibit 1691) and (b) the "advance material" to which Paul Maritz referred in his May 23, 1993 email (MS7085723).

Response:

Microsoft incorporates its general objections and objections to definitions and instructions as set forth above. Microsoft further objects to this Request on the ground that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Microsoft further objects to this Request on the ground that it is cumulative and duplicative of prior discovery requests to which Microsoft has responded and in response to which any documents produced by Microsoft should be contained in the *Comes* database. For example, Microsoft produced documents responsive to this Request in responding to requests for production by plaintiffs in (a) the MDL proceeding, *see, e.g.*, Request No. 1 of Plaintiffs' First Set of Requests for Production of Documents to Defendant Microsoft Corporation, dated July 7, 2000; and (b) *Microsoft I-V Cases*, *see, e.g.*, Request Nos. 96 and 97 of Plaintiffs' Tenth Request for Production of Documents to Defendant Microsoft Corporation, dated May 3, 2002.

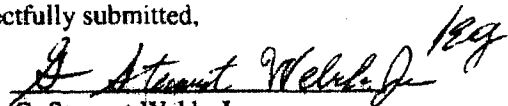
Subject to and without waiving the foregoing objections, Microsoft provides the following response to this Request: Microsoft believes that the *Comes* database now in plaintiff's possession contains documents responsive to this Request, *e.g.*, MS 0097121 - 0097126, MS7085669, MS7085836, MS-PCA 2535921- 2535925, and that any responsive documents in Microsoft's possession are contained in the *Comes* database. Microsoft has undertaken a reasonable search for the specific documents identified in this Request, but has

not located them to date. If Microsoft obtains and identifies those documents in the course of discovery, it will provide them to Novell, but Novell is as well-positioned as Microsoft to find the requested documents by searching for them in the *Comes* database.

Dated: June 16, 2008

Respectfully submitted,

By:


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(Fed. Bar No. 00828)

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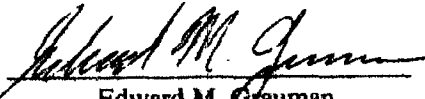
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Attorneys for Microsoft Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2008, I caused a copy of the foregoing to be served by e-mail and Federal Express on:

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R. Bruce Holcomb
DICKSTEIN SHAPIRO LLP
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Edward M. Grauman