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March 6, 2009

**VIA FEDERAL EXPRESS & ELECTRONIC FILING**

The Honorable J. Frederick Motz  
United States District Judge  
United States District Court for the District of Maryland  
U.S. Courthouse – Room 510  
101 West Lombard Street  
Baltimore, MD 21201

Re: *Novell, Inc. v. Microsoft Corp.*, Civil Action No. JFM 05-1087, MDL No. 1332

Dear Judge Motz:

We write to request your assistance in resolving a discovery dispute with respect to the deposition of Mr. William H. Gates III. Throughout fact discovery in this case, the parties have worked together in scheduling the depositions of each other's former and current employees. As part of that cooperation, we provided counsel from Microsoft with a list of the current and former Microsoft employees whom we wished to depose, including Mr. Gates. In accordance with Federal Rule of Civil Procedure 30(d)(1), we were prepared to complete Mr. Gates' deposition in one day, of no more than seven hours duration.

In January, we were advised by Microsoft's counsel, Mr. Steven L. Holley, that Mr. Gates would be made available for his deposition in Seattle, Washington on March 4, 2009, but that his availability was limited to four hours. While we disagreed with Microsoft's unilateral restriction of time for Mr. Gates' deposition, we agreed to proceed with the understanding that we could bring the matter to Your Honor's attention if the four hours proffered turned out to be insufficient to complete his deposition. The parties' agreement was memorialized in an e-mail exchange between me, on behalf of Novell, and Mr. Holley, on behalf of Microsoft.<sup>1</sup>

Two days before the scheduled deposition of Mr. Gates, Mr. Holley advised, contrary to our agreement, that Mr. Gates would only be available for three hours. Our strenuous objection was met with nothing more than a vague promise to see if Mr. Gates could extend the time he was available. Mr. Gates' deposition commenced on the morning of March 4th. After only three

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<sup>1</sup> See E-mail exchange between Steven L. Holley and Jeff Johnson, January 23, 2009 (attached as Exhibit 1).

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The Honorable J. Frederick Motz  
March 6, 2009  
Page 2

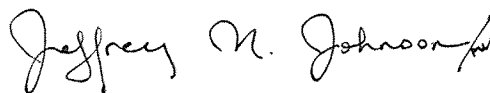
hours and sixteen minutes of deposition (according to the videographic record) and in the midst of examination on an important document, Mr. Holley excused Mr. Gates from the ongoing deposition. Our objection was noted on the record.

We respectfully request that we be permitted to fairly examine Mr. Gates and complete his deposition in accordance with Federal Rule of Civil Procedure 30(d)(1). We fully anticipate that we will be able to complete the deposition within the time allotted by the Rule.

If the past is any guide, we expect Microsoft to object to our request, claiming that Mr. Gates previously has been deposed or has testified in trial in other cases brought against Microsoft and therefore should not have to bear the burden of being deposed again in this case. While prior examinations of Mr. Gates at deposition and trial have touched on some of the issues relevant to this case, which concerns Microsoft's anticompetitive conduct that caused harm to Novell's office productivity applications in the mid-1990's, those examinations tended to be superficial and limited, primarily due to the fact that the other cases involved many more issues and much broader time periods. In fact, of the fifteen exhibits used in Mr. Gates' aborted deposition, it is our understanding that a vast majority of them had never been shown to Mr. Gates in prior depositions or at trial. If permitted to complete our deposition of Mr. Gates, we intend to examine Mr. Gates on a number of additional documents not previously the subject of Mr. Gates' testimony.

While I am on travel today, I am generally available next week if you feel that a conference call is needed to resolve this issue. Thank you for your consideration and assistance.

Very truly yours,

A handwritten signature in black ink, reading "Jeffrey M. Johnson" with a stylized flourish at the end.

Jeffrey M. Johnson

JMJ/csg

Encl.

cc: David B. Tulchin, Esq. (by First class and electronic mail)  
Steven L. Holley, Esq. (by First class and electronic mail)  
G. Stewart Webb, Jr., Esq. (by First class and electronic mail)