IN THE UNITED STATES DISTRICT COURT
FOR THE 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

AFFIDAVIT OF RYAN L. RICHARDS

I am a member of the Bar of the state of Utah, former Associate General Counsel and Acting General Counsel for Novell, Inc., and current Vice President and Deputy General Counsel at Novell. I submit this affidavit in support of Novell's Opposition to Microsoft's Motion to Compel and in further support of Novell's assertion of work product protection for document Bates numbered NOV-B07587565 (the "Document") – which are my notes from an interview of Richard Hume and Lynn Monson.

1. I have reviewed the Document and the Memorandum in Support of Microsoft's Motion to Compel. As stated in my March 27, 2009 affidavit, I authored the Document in my capacity as Novell's Associate General Counsel. The Document contains my notes from an interview I conducted of Richard Hume and Lynn Monson in or around May 1996. The interview was conducted, and the Document was prepared, for two primary reasons: (1) to obtain information responsive to the Department of Justice's Civil Investigative Demands and requests for information, in connection with the DOJ's investigation of Microsoft's monopolization of the computer software market; and (2) to gather information concerning Microsoft's anticompetitive acts, in anticipation of civil litigation against Microsoft for damage caused to Novell's business interests.

2. At the time it was created, I regarded the Document as attorney work product and would not have produced it to the DOJ.

3. I am submitting this affidavit to provide further detail on statements made in my March 27, 2009 affidavit concerning the Document.

4. Although the Document served dual purposes – to gather information responsive to DOJ inquiries and to further investigate Microsoft's anticompetitive activities – it was created during a time when Novell's antitrust action against Microsoft for damage caused to Novell's business applications was anticipated.

5. Since at least 1992 – when I was working for WordPerfect – I had been investigating Microsoft's unlawful conduct and had determined that litigation was the likely avenue to seek redress against Microsoft. Regardless of the DOJ investigation of and suit against Microsoft, Novell anticipated filing – and did in fact file – a private antitrust action against Microsoft for damage caused Novell's business applications.

6. At the time I created the interview notes, Novell believed and I believed, in my capacity as Novell's in-house counsel, that Microsoft's anticompetitive activities – with respect to Novell's office productivity applications business – reasonably could result in a lawsuit. The belief that litigation could result against Microsoft was based on Novell's own investigation of Microsoft's anticompetitive conduct and the DOJ's ongoing investigation of Microsoft for many of the same acts.

7. In preparing the Document, I did not merely record the observations of Messrs. Hume and Monson. It was not then, nor has it ever been, my practice to make verbatim transcripts of witness interviews or simply record what a witness says. Instead, I record what I deem important from what a witness states and record my thoughts, opinions, inferences,

and impressions about what the witness said. The Document is no different – it reflects what I deemed important from the oral statements given by Messrs. Hume and Monson.

8. The two statements from the Document that Microsoft references in its Motion – "no big issues that are harming our products" and "It's hard to prove that MS is maliciously keeping things away from people" – are inferences and mental impressions derived from what Messrs. Hume and Monson said concerning the specific product they were working on within Novell.

9. Although Novell did not file this action until 2004, I was preparing for this litigation at the time I created the Document. But for the DOJ case – which I understand was filed in May 1998 –Novell would have filed this case sooner. Because Novell's impending claim against Microsoft was based in part on matters the DOJ complained of, the Clayton Act suspended the statute of limitations period for this action. Novell took advantage of the tolling period to conduct additional research on its claim.

Dated: April 23rd, 2009.

Ryan L. Richards

State of Utah)
ss
County of Utah)

SUBSCRIBED AND SWORN before me this 23rd day of April, 2009 by Ryan L. Richards.

Notary Public

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COMM. EXP. 3-22-2011