

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

**AFFIDAVIT OF STEVEN L. HOLLEY IN SUPPORT OF
MICROSOFT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

STEVEN L. HOLLEY, being duly sworn, deposes and says:

1. I am a member of the bar of the State of New York and a partner of the law firm of Sullivan & Cromwell LLP, attorneys for defendant Microsoft Corporation ("Microsoft") in the above-captioned action. I am admitted *pro hac vice* before this Court.
2. I submit this affidavit to place before the Court materials to which reference is made in Microsoft's Memorandum in Opposition to Novell's Renewed Motion for Summary Judgment on Microsoft's Affirmative Defenses and in Support of Microsoft's Cross-Motion for Summary Judgment, dated November 13, 2009.
3. Attached hereto as Exhibit 1 is a copy of the Asset Purchase Agreement between Novell, Inc. ("Novell") and Caldera, Inc. ("Caldera"), dated July 23, 1996 and bearing production numbers NOV00728312-41.
4. Attached hereto as Exhibit 2 is a copy of the Settlement Agreement between Microsoft and Caldera, dated January 7, 2000 and bearing production numbers NOV00107061-71.

5. Attached hereto as Exhibit 3 is a copy of Novell's Form 10-Q, dated September 13, 1994.
6. Attached hereto as Exhibit 4 are relevant pages of the transcript of the oral argument on Microsoft's motion to dismiss Novell's complaint in this action, dated June 7, 2005.
7. Attached hereto as Exhibit 5 are relevant pages of the Declaration of Roger G. Noll, submitted in this action, dated May 1, 2009.
8. Attached hereto as Exhibit 6 are relevant pages of the Reply Report of Roger G. Noll, submitted in this action, dated July 24, 2009.
9. Attached hereto as Exhibit 7 is a copy of a memorandum from David R. Bradford to the Novell board of directors, dated November 18, 1994 and bearing production numbers NOV00418617-19.
10. Attached hereto as Exhibit 8 is a copy of the Declaration of Stephen J. Hill, submitted in *Novell, Inc. v. Canopy Group, Inc.*, dated May 2, 2002 and bearing production numbers NOV00116692-701.
11. Attached hereto as Exhibit 9 is a copy of a memorandum from David R. Bradford to the Novell board of directors, dated April 12, 1995.
12. Attached hereto as Exhibit 10 is a copy of a draft complaint captioned *Novell, Inc. v. Microsoft Corp.* (D. Utah), bearing production numbers NOV00110568-604.
13. Attached hereto as Exhibit 11 is a copy of a memorandum from David R. Bradford to the Novell board of directors et al., dated April 27, 1995 and bearing production numbers NOV-B03731397-98.
14. Attached hereto as Exhibit 12 is a copy of a memorandum from David R. Bradford to Bob Frankenberg, dated April 27, 1995 and bearing production numbers NOV-B00866170-71.

15. Attached hereto as Exhibit 13 is a copy of a memorandum from David R. Bradford to Bob Frankenberg et al., dated May 10, 1995 and bearing production numbers NOV00661314-15.
16. Attached hereto as Exhibit 14 is a copy of a letter from Robert J. Frankenberg to William H. Gates, dated June 23, 1995 and bearing production numbers NOV00545722-24.
17. Attached hereto as Exhibit 15 is a copy of a letter from William H. Gates to Robert J. Frankenberg, dated July 20, 1995 and bearing production numbers NOV00540722-26.
18. Attached hereto as Exhibit 16 is a copy of a letter from Robert J. Frankenberg to William H. Gates, dated August 21, 1995 and bearing production number NOV00707893.
19. Attached hereto as Exhibit 17 is a copy of Novell's Form 10-Q, dated March 12, 1996.
20. Attached hereto as Exhibit 18 is a copy of an e-mail from David Bradford to Robert Frankenberg, dated May 9, 1996 and bearing production number NOV00109228.
21. Attached hereto as Exhibit 19 is a copy of a memorandum from Rob Hicks to David Bradford, dated April 23, 1996 and bearing production numbers NOV00109214-17.
22. Attached hereto as Exhibit 20 is a copy of the minutes of a meeting of Novell's board of directors, dated May 23, 1996 and bearing production numbers NOV00110309-12.
23. Attached hereto as Exhibit 21 is a copy of a memorandum from Stephen Hill to David Bradford, dated May 23, 1996 and bearing production numbers NOV00486926-27.
24. Attached hereto as Exhibit 22 is a copy of a memorandum from David Bradford to Bob Frankenberg, dated July 23, 1996 and bearing production number NOV00134687.
25. Attached hereto as Exhibit 23 is a copy of a memorandum from David Bradford to Bob Frankenberg, Mary Burnside and Jim Tolonen, dated July 10, 1996 and bearing production numbers NOV00134577-82.

26. Attached hereto as Exhibit 24 are relevant pages of the transcript of the deposition of Bryan Wayne Sparks, taken in *Novell, Inc. v. Canopy Group, Inc.* on September 10, 2001.

27. Attached hereto as Exhibit 25 are relevant pages of the transcript of the deposition of Robert Frankenberg, taken in this action on March 25, 2009.

28. Attached hereto as Exhibit 26 are relevant pages of the transcript of the deposition of Ransom H. Love, taken in *Novell, Inc. v. Canopy Group, Inc.* on August 1, 2001.

29. Attached hereto as Exhibit 27 are relevant pages of the transcript of the deposition of Greg Jones, taken in *Novell, Inc. v. Canopy Group, Inc.* on February 20, 2002.

30. Attached hereto as Exhibit 28 is a copy of a letter from David R. Bradford to Gary Reback, dated August 16, 1996 and bearing production number NOV-B07562870.

31. Attached hereto as Exhibit 29 is a copy of the complaint filed by Caldera in *Caldera, Inc. v. Microsoft Corp.*, dated July 23, 1996 and bearing production numbers NOV00125439-67.

32. Attached hereto as Exhibit 30 is a copy of the amended complaint filed by Caldera in *Caldera, Inc. v. Microsoft Corp.*, dated February 12, 1998 and bearing production numbers NOV00125468-502.

33. Attached hereto as Exhibit 31 is a copy of the complaint filed by Novell in this action, dated November 12, 2004.

34. Attached hereto as Exhibit 32 is a copy of an order granting a motion to compel filed by Microsoft in this action, dated August 26, 2008.

35. Attached hereto as Exhibit 33 is a copy of the complaint filed by the United States in *United States v. Microsoft Corp.*, dated July 15, 1994.

36. Attached hereto as Exhibit 34 is a copy of an e-mail from David Bradford to Stephen Hill, dated February 28, 1997 and bearing production numbers NOV00118824-25.

37. Attached hereto as Exhibit 35 is a copy of a letter from David R. Bradford to Stephen J. Hill, dated March 31, 1998 and bearing production number NOV00753628.

38. Attached hereto as Exhibit 36 is a copy of a fax from Sherise Crosby to Steve Hill, dated August 9, 1996 and bearing production numbers SCM013259-61.

39. Attached hereto as Exhibit 37 is a copy of a fax from Renata M. Sos to Stephen J. Hill, dated August 21, 1996 and bearing production numbers SCM003664-67.

40. Attached hereto as Exhibit 38 is a copy of an e-mail from David Bradford to Geoff Boorman et al., dated May 11, 1998 and bearing production numbers NOV00119165-66.

41. Attached hereto as Exhibit 39 is a copy of an e-mail from David Bradford to philm@summitlaw.com (with a copy to shill@scm.com and Richard Rife), dated September 3, 1998 and bearing production number NOV00119168.

42. Attached hereto as Exhibit 40 are relevant pages of the transcript of the oral argument on Novell's motion to intervene in *Caldera, Inc. v. Microsoft Corp.*, dated July 16, 1998.

43. Attached hereto as Exhibit 41 is a copy of an e-mail exchange between David Bradford and Stephen Hill, dated July 29, 1998 and bearing production numbers NOV00753630-31.

44. Attached hereto as Exhibit 42 is a copy of an e-mail from David Bradford to Peter Troop, dated January 7, 2000 and bearing production numbers NOV00728970-71.

45. Attached hereto as Exhibit 43 is a copy of Novell's complaint in *Novell, Inc. v. Canopy Group, Inc.* [originally captioned *Novell, Inc. v. Caldera, Inc.*], filed June 16, 2000 and bearing production numbers NOV00114819-928.

46. Attached hereto as Exhibit 44 is a copy of the ruling on Novell's motion for partial summary judgment in *Novell, Inc. v. Canopy Group, Inc.*, dated August 14, 2002 and bearing production numbers NOV00135601-04.

47. Attached hereto as Exhibit 45 is a copy of the judgment in *Novell, Inc. v. Canopy Group, Inc.*, filed February 10, 2003 and bearing production numbers NOV00135620-21.

48. Attached hereto as Exhibit 46 is a copy of the Brief of Appellant Microsoft Corporation, filed on appeal from the motion to dismiss in this action, dated April 13, 2006.

49. Attached hereto as Exhibit 47 is a copy of Microsoft's Memorandum in Support of its Motion to Compel Production of Documents in this action, filed August 8, 2008.

50. Attached hereto as Exhibit 48 is a copy of Microsoft's Memorandum in Opposition to Novell's Motion for Summary Judgment on Six Defenses in this action, dated August 22, 2008.

51. Attached hereto as Exhibit 49 is a copy of an order denying a motion for partial summary judgment filed by Novell in this action, dated August 28, 2008.

52. Attached hereto as Exhibit 50 is a copy of Novell's complaint to the European Commission against Microsoft, dated April 26, 1993 and bearing production numbers NOV00029412-68.

53. Attached hereto as Exhibit 51 is a copy of a memorandum from David R. Bradford to file, dated April 1, 1996 and bearing production number NOV-B07563362.

54. Attached hereto as Exhibit 52 is a copy of the Affidavit of Ryan L. Richards, submitted in this action, sworn to on April 23, 2009.

55. Attached hereto as Exhibit 53 are relevant pages of the transcript of the deposition of Robert Hicks, taken in *Novell, Inc. v. Canopy Group, Inc.* on July 13, 2001.

56. Attached hereto as Exhibit 54 is a copy of the order of dismissal in *Caldera, Inc. v. Microsoft Corp.*, dated January 10, 2000 and bearing production numbers MS-PCA1139675-76.

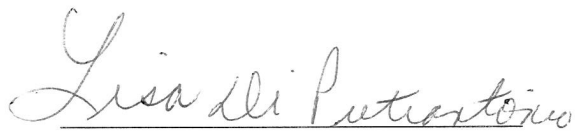
57. Attached hereto as Exhibit 55 is a copy of the stipulation of settlement in *Caldera, Inc. v. Microsoft Corp.*, bearing production numbers MS-PCA1139671-72.

58. Attached hereto as Exhibit 56 are relevant pages of the transcript of the deposition of Roger G. Noll, Ph.D., taken in this action on September 10, 2009.



Steven L. Holley

Subscribed to and sworn to before
me this 10th day of November, 2009.



Notary Public

LISA DIPIETRANTONIO
Notary Public, State of New York
No. 01DI6044245
Qualified in Bronx County
Commission Expires July 3, 2010