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**UNITED STATES DISTRICT COURT  
for the District of Utah  
Central Division**

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Novell, Inc.,	*	NOVELL'S MOTION
Plaintiff,	*	FOR A CURATIVE INSTRUCTION
	*	
v.	*	
	*	
Microsoft Corporation,	*	Case No. 2:04-cv-01045-JFM
Defendant.	*	Hon. J. Frederick Motz

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Plaintiff Novell, Inc. (“Novell”) respectfully moves this Court for the following curative jury instruction:

During opening statements, counsel for Microsoft made reference to the fact that Novell did not file this lawsuit until 2004. The jury should draw no adverse inference against Novell based on the fact that it filed the present lawsuit in 2004 rather than at some earlier time. Under the law, Novell had the legal right to file its lawsuit when it did and was under no legal obligation to bring this lawsuit at any earlier date.

As explained in the accompanying memorandum in support of this motion, this instruction is necessary to cure the unfair prejudice resulting from Microsoft’s improper argument during its opening statement that the jury should infer, from the fact that Novell’s suit was not brought until 2004, that Novell’s suit lacks merit.

Wherefore, Novell respectfully requests that the Court give the requested curative instruction.

Dated: October 18, 2011

DICKSTEIN SHAPIRO LLP

By: /s/ Jeffrey M. Johnson  
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

By: /s/ Jeffrey M. Johnson  
Jeffrey M. Johnson