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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

_____	)	
NOVELL, INC.,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case 2:04-CV-1045 JFM
	)	
MICROSOFT CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE J. FREDERICK MOTZ

DATE: OCTOBER 19, 2011

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL  
VOLUME III

Reported by: KELLY BROWN HICKEN, CSR, RPR, RMR  
LAURA ROBINSON, CSR, RPR  
ED YOUNG, CSR, RPR

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1 SALT LAKE CITY, UTAH, THURSDAY, OCTOBER 19, 2011

2 \* \* \* \* \*

3 THE COURT: Good morning everyone.

4 I understand there's an issue or something.

5 MR. JOHNSON: Yes, Your Honor. It's not really an  
6 issue. I just -- I didn't want to -- we're going to start  
7 this morning with the deposition of Mr. Gates.

8 THE COURT: Sure.

9 MR. JOHNSON: And I wanted you to be aware in  
10 advance that Microsoft had withdrawn its objection to the  
11 exhibits that we discussed, the FUD exhibit --

12 THE COURT: Okay.

13 MR. JOHNSON: -- that we discussed in chambers.  
14 They withdrew that. So that is going to play now in full.  
15 And I didn't want that to come on the screen and you say --

16 THE COURT: What happened?

17 MR. JOHNSON: -- what happened here, and be upset  
18 by that.

19 THE COURT: You only upset me.

20 MR. JOHNSON: The other things, Your Honor, I might  
21 mention since we're waiting for Juror Number 4 --

22 THE COURT: I think he's here now.

23 MR. JOHNSON: Okay. Just we had created a list of  
24 all the cleared exhibits that have -- you know, there's no  
25 objections to. And it's our intention -- may I approach?

1 THE COURT: Sure.

2 MR. JOHNSON: It's our intention to move them into  
3 evidence at some point during the proceeding.

4 THE COURT: They are now -- subject to Microsoft  
5 looking at them they're all in. Just double check to make  
6 sure there hasn't been a mistake.

7 MR. TULCHIN: Thank you, Your Honor. We just got  
8 this this week.

9 THE COURT: No. No. No. Absolutely. But you  
10 don't have to worry about you telling me later that there is  
11 no objection and you want to move them in.

12 MR. JOHNSON: Okay. So other than their objecting,  
13 they're deemed admitted.

14 THE COURT: They're in other than their objecting.

15 MR. JOHNSON: Thank, Your Honor, very much.

16 THE COURT: And the jurors can be here at 8:00.  
17 They want to stop at 1:30 because they've changed their work  
18 schedules. But they can be here at 8:00, if that's all right  
19 with you.

20 MR. TULCHIN: Yes, Your Honor.

21 MR. JOHNSON: Yeah. We heard that this morning,  
22 Your Honor, and that's wonderful.

23 Your Honor, I also would just like to mention, I  
24 assume you saw that we filed two motions for curative  
25 instructions with respect to the openings yesterday.

1 THE COURT: I have not.

2 MR. JOHNSON: Okay. We filed those last night.

3 THE COURT: Okay. They'll probably come to me via  
4 Baltimore. But I'll start looking at the docket in the  
5 morning.

6 MR. JOHNSON: Okay. Thank you very much, Your  
7 Honor.

8 THE COURT: Thank you.

9 MR. TULCHIN: Are we starting with the continuation  
10 of the findings, Your Honor?

11 THE COURT: I don't think so.

12 I understand you're not going to have it  
13 continuing. You're going to start with a deposition; right.

14 MR. JOHNSON: We are, Your Honor.

15 With respect to the filings, Your Honor, is there  
16 something we could do to get those to you directly here?

17 THE COURT: Yeah. I'm here in the morning. But  
18 I'll try to think of the easiest way.

19 MR. JOHNSON: Okay. Perhaps we could deliver a  
20 courtesy copy right to your temporary chambers here.

21 THE COURT: Yes, you can. I'm just trying to  
22 figure it out.

23 MR. TULCHIN: Your Honor, just for my  
24 clarification. Sorry. I don't want to take time with the  
25 jury ready. But having started reading the findings,

1 shouldn't we finish them?

2 THE COURT: No. We said yesterday, I'm sorry, I  
3 was not clear. I said that they could use it as filler.

4 MR. JOHNSON: Thank you.

5 THE COURT: I thought Microsoft agreed.

6 MR. TULCHIN: They could use it as what, Your  
7 Honor?

8 THE COURT: Fillers. You know, between the  
9 testimony.

10 MR. JOHNSON: And that's what we intend to do.

11 THE COURT: Thank you. I'm sorry. That's what I  
12 said when you couldn't understand what I said. But I thought  
13 other people nodded yes, and I thought you did, too.

14 (Whereupon, the jury returned to the court  
15 proceedings.)

16 THE COURT: Good morning, everybody. Sorry for the  
17 brief delay. One of the things we were discussing is I know  
18 counsel have agreed, and I've said it's okay, in fact, I even  
19 suggested it, that instead of reading those findings all at  
20 once we will sort of use them as filler in-between other  
21 witnesses to keep your attention. I think we're going to have  
22 two videotaped depositions today. The first is of Mr. Gates.  
23 And at some point either today or we'll finish reading those  
24 findings that Mr. Taskier has agreed to.

25 Okay. All set?

1 MR. JOHNSON: All set, Your Honor.

2 THE COURT: And we're just for your -- oh, one  
3 other thing. Thank you all. Let's get started at 8 o'clock  
4 in the morning. The juryroom will be open at 7:30, and we'll  
5 be ready to start at 8 o'clock. But we will stop at 1:30  
6 because I understand you've arranged your work schedules to  
7 stop at 1:30.

8 And the other thing is the court reporter will  
9 leave at some point after we've started it because there's no  
10 sense in the court reporter being here to take down and have  
11 what already transcribed in the deposition.

12 MR. JOHNSON: Thank you, Your Honor. The plaintiff  
13 at this time is going to play portions of the deposition of  
14 William Gates. For Your Honor's benefit, this was taken over  
15 two days. The first portions of the tape run an hour 52. And  
16 the second portion of the tape runs an hour 11, just for  
17 purposes of your thinking about breaks.

18 THE COURT: Okay. And unless somebody needs a  
19 break ahead of time, we'll listen to the first session, and  
20 then we'll listen to the second session.

21 MR. JOHNSON: Thank you, Your Honor.

22 THE COURT: But don't be shy about raising your  
23 hand if you need a break before then.

24 (Whereupon, the deposition of William Gates was played.)

25 THE COURT: Is that it?

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MR. JOHNSON: That's the first day.

THE COURT: We'll take a short recess. And I'm ready whenever anybody else is.

(Whereupon, the jury left the court proceedings.)

(Recess.)