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

NOVELL, INC.,

Plaintiff,

-v-

MICROSOFT CORPORATION,

Defendant.

MICROSOFT'S RENEWED MOTION
FOR JUDGMENT AS A MATTER OF
LAW

Civil No. 2:04 CV 1045
Honorable J. Frederick Motz

January 13, 2012

Pursuant to Federal Rule of Civil Procedure 50(b) and District of Utah Civil Rule 7-1(a), Defendant Microsoft Corporation (“Microsoft”) hereby renews its motion for judgment as a matter of law (originally filed on November 17, 2011, at the close of Novell’s case) on (a) each ground set forth in Microsoft’s memoranda in support of that motion (filed on November 17, 2011 and November 21, 2011), (b) each ground set forth in open court at trial, and (c) on the grounds set forth below.

Judgment should be entered in Microsoft’s favor because, given the evidence at trial, (1) a reasonable jury would not have a legally sufficient evidentiary basis to find, and as a matter of law there is no basis to find, that Microsoft’s withdrawal of support for the namespace extension APIs constituted anticompetitive conduct under the antitrust laws; (2) a reasonable jury would not have a legally sufficient evidentiary basis to find, and as a matter of law there is no basis to find, that Microsoft’s withdrawal of support for the namespace extension APIs harmed competition in the PC operating system market; (3) a reasonable jury would not have a legally sufficient evidentiary basis to find, and as a matter of law there is no basis to find, that Microsoft’s withdrawal of support for the namespace extension APIs was the cause of any meaningful delay in the release of versions of PerfectOffice, WordPerfect and Quattro Pro for Windows 95; (4) a reasonable jury would not have a legally sufficient evidentiary basis to find, and as a matter of law there is no basis to find, that Microsoft’s withdrawal of support for the namespace extension APIs caused injury to Novell or entitles Novell to an award of any damages; (5) Novell has no standing to assert its claim because it suffered no cognizable antitrust injury, and because the evidence at trial also establishes that any harm inflicted on Novell’s office productivity applications had no substantial impact on competition in the PC operating system market; (6) the claim asserted in Count I of Novell’s Complaint is “associated directly or

indirectly with” DR DOS and/or the PC operating system market, and thus that claim was sold to Caldera in 1996 and, as a result, Novell does not have standing to assert it; and (7) Novell’s claim is barred by the applicable four-year statute of limitations set forth in 15 U.S.C. § 15b and, further, the tolling provision of 15 U.S.C. § 16(i) does not apply because the claim is not “based in whole or in part” on *United States v. Microsoft Corp.* (as the quoted phrase is used in that statute).

For each of these reasons and the reasons that will be set forth in Microsoft’s Memorandum in Support of its Renewed Motion for Judgment as a Matter of Law, which will be filed on February 3, 2012 in accordance with the briefing schedule approved by the Court on January 6, 2012 (Docket #395), Microsoft respectfully requests that the Court grant this motion and enter judgment in favor of Microsoft.

Dated: January 13, 2012

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January, 2012, I caused a true and correct copy of the foregoing Microsoft's Renewed Motion for Judgment as a Matter of Law to be filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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