

03-23-2010



103592627

Atty Ref/Docket No.: 1565.272US1

Patent and Trademark Office

To the Director of the U.S. Patent and Trademark Office: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Christopher J. Brookhart

Additional name(s) of conveying party(ies) attached?

☐ Yes ☒ No

2. Nature of conveyance:

☒ Assignment☐ Merger☐ Security Agreement ☐ Change of Name☐ Other

2. Name and address of receiving party(ies):

Name: Novell, Inc.

Street Address: 1800 South Novell Place

City: Provo State: UT Zip: 84606Country: United States of AmericaAdditional name(s) & address(es) attached? ☐ Yes ☒ NoExecution Date: May 1, 2006

3. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

B. Patent No.(s)

Serial No. 12/272,882, filed November 18, 2008

Additional numbers attached? ☐ Yes ☒ No

4. Name and address of party to whom correspondence concerning document should be mailed:

Name: Mark V. Muller

Address:

Schwegman, Lundberg & Woessner, P.A.

P.O. Box 2938

Minneapolis, MN 55402-0938

5. Total number of applications and patents involved: 16. Total fee (37 CFR 3.41): \$ 40.00☐ Enclosed☒ Authorized to be charged to deposit account 19-0743

7. Please charge any additional fees or credit any over payments to our Deposit Account No.: 19-0743

DO NOT USE THIS SPACE

8. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Mark V. Muller / Reg. No. 37,509

Name of Person Signing

Mark V. Muller

Signature

MARCH 22, 2010

Date

Total number of pages including cover sheet: 7

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks

Mail Stop Assignment Recordation Services

P.O. Box 1450

Alexandria, VA 22313-1450

02/11/2010
700429172RECORDATION FORM COVER SHEET
PATENTS ONLY

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P.O. Box 2938

Minneapolis, MN 55402--0938

5. Total number of applications and patents involved: 1

6. Total fee (37 CFR 3.41): \$ 40.00

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Signature

FEBRUARY 11, 2010

Date

Total number of pages including cover sheet: 7

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Mail Stop Assignment Recordation Services

P.O. Box 1450

Alexandria, VA 22313-1450

CH \$40.00 190743 12272882

NOVELL, INC.

Intellectual Property, Non-Disclosure Agreement and Non-Solicitation Agreement

This Agreement is made between Christopher John Brookhart (T or "me") and Novell and it becomes effective on the date my employment commences, or, if I am a current employee, it becomes effective on the date I sign the Agreement. "Novell" means Novell, Inc., its divisions, subsidiaries, companies in which Novell has a controlling interest, and their successors in interest. In exchange for my new employment, or, if I am currently employed by Novell, for my continued employment, Novell and I agree as follows:

1. Purpose. This Agreement is intended to help protect Novell's general business interests, and to protect against the unauthorized use or disclosure of information and assets owned by Novell or entrusted to it by third parties.

2. Definitions.

a. "Confidential Information" means information owned or held by Novell, or entrusted to Novell by third parties under obligation of confidentiality, that is not generally known to the public. A combination or compilation of information will not be deemed a matter of public knowledge even if some or all of the information is a matter of public knowledge unless both the individual pieces of information that make up the combination or compilation, and the combination or compilation itself, are matters of public knowledge. "Confidential Information" may include, without limitation, the following:

- i. computer software (including source code and object code), hardware, firmware and documentation;
- ii. technical information concerning products and services, including product data and specifications, diagrams, flow charts, drawings, test results, algorithms, know-how, processes, inventions, research projects and product development;
- iii. business information, including cost information, profits, sales information, accounting and unpublished financial information, business plans, markets and marketing methods, customer lists and customer information (including pricing, preferences, discounts and contracts), purchasing techniques, supplier lists, supplier information (including pricing, preferences, discounts and contracts) and advertising and business strategies;
- iv. employee information, including their compensation, strengths, weaknesses and skills; Novell recruiting strategies and goals, and hiring criteria;
- v. third party information entrusted to Novell under obligations of confidentiality;
- vi. other information not generally known to the public which, if misused or disclosed, could reasonably be expected to adversely affect the business of the owner or discloser of the information; and
- vii. other information not generally known to the public that is of independent economic value to the owner or discloser of the information.

b. "Intellectual Property" means all inventions, discoveries, improvements, Confidential Information, formulas, techniques, data, works of authorship, programs (including computer programs), systems, specifications, documentation, algorithms, flow charts, logic diagrams, source codes, processes, and other information, including works-in-progress, whether or not subject to patent, trademark, copyright, trade secret or mask work protection, or other similar or related forms of intellectual property protection, and whether or not reduced to practice.

c. "Novell Intellectual Property" means all Intellectual Property that is acquired or licensed by Novell or that is made, created, authored, conceived, or reduced to practice by me, either alone or jointly with others, during the period of my employment with Novell that (a) relates to or benefits the actual or anticipated business, activities, research, or investigations of Novell, or (b) results from or is suggested by work performed by me for Novell (whether or not made or conceived during normal working hours or on the premises of Novell), or (c) results, to any extent, from use of the premises or property of Novell.

3. Obligations of Confidentiality. The obligations of this Section 3 will survive the termination of my employment with Novell.

a. I understand during my employment I will be entrusted with and I will possess or be made aware of Confidential Information of Novell. I agree that such Confidential Information is the sole property of or in the control of Novell. Except with prior written authorization by Novell, or as required in properly discharging my duties to Novell, I agree that at all times during and after employment with Novell, I will keep such Confidential Information in strictest confidence, and that I will not:

- i. use, disclose, reproduce, or transfer any such Confidential Information for others or myself;
- ii. take any such Confidential Information or reproductions thereof from Novell's or others' facilities except as my duties as a Novell employee may require;
- iii. disclose any such Confidential Information to persons inside Novell except on a "need-to-know" basis; or
- iv. disclose any such Confidential Information to persons outside Novell.

b. I recognize that Novell has received, and in the future will receive, third party Confidential Information subject to duties of confidentiality. I agree, at all times during my employment at Novell and thereafter, to hold all such Confidential Information in the strictest confidence and not to disclose it to any person, firm, or corporation, or to use it except as necessary in carrying out my work for Novell consistent with Novell's agreement with such third party.

4. Agreements with Third Parties. I agree not to disclose to Novell or use in the course of my employment with Novell, any Intellectual Property to the extent that such Intellectual Property is the property of prior employers, clients, or customers, or other third parties. I further agree not to use in the course of my employment by Novell, any Intellectual Property or equipment that I may have obtained from former employers, clients or customers in the course of work performed as an employee, under contract, or as a consultant.

Intellectual Property and Non-Disclosure Agreement

Page 1

I further represent that I am not, and no party asserts that I am, subject to any restriction from a former employer or other entity with which I have been affiliated that would in any way affect my ability to perform my duties for Novell, including any covenant not to compete, covenant not to solicit, or any other restriction. I agree that if I am so restricted, or if any party has asserted that I am so restricted, I have provided all agreements, documents or other information relating to the restriction, or asserted restriction, to Novell prior to my signing this agreement.

5. Return of Materials. When my employment with Novell ends, for whatever reason, or earlier if Novell so requests, I will promptly deliver to Novell (and not retain) originals or copies of all documents, records, lab notebooks, hand-written notes, patent applications, software programs, media and other materials containing any Confidential Information or Novell Intellectual Property. At termination of my employment for any reason, I agree to sign and deliver the "Certification Upon Termination of Employment" attached hereto as Exhibit A and to participate in an exit interview.

6. Reimbursement. To the extent allowable under applicable law, I grant Novell permission to withhold from any money due to me from Novell at or following the date of termination of my employment (including salary, bonus, commissions, expense reimbursement, etc.) any amounts I owe Novell including, without limitation, any amounts for personal expenses charged to credit cards or phone cards owned by Novell or any cash or other advance made to me by Novell.

7. Personal Property. I release Novell and hold it harmless from any claim relating to the loss of, disappearance of, or damage to my personal property on Novell premises.

8. Disclosure Obligations. I promise and agree to fully and promptly disclose and give to Novell a complete record of all Novell Intellectual Property after learning of the conception, creation, development, or discovery of Novell Intellectual Property not already disclosed to Novell. To any extent that I develop Novell Intellectual Property, I agree to keep adequate and current written records of all such Property in the form of notes, sketches, drawings, or reports that will be Novell's property at all times. In addition, I promise and agree to disclose promptly in writing to Novell all Intellectual Property that is based in whole or in part on Novell Intellectual Property and that I make or conceive alone or with others at any time during or after my employment with Novell.

9. Ownership. I agree that all Novell Intellectual Property comprises, to the extent the term is applicable, "works made for hire," and that Novell, Inc. owns all the copyright, patent, and other intellectual property rights in such works. If and to the extent any such Novell Intellectual Property does not satisfy the legal requirements to constitute a work made for hire, I transfer, convey, and assign to Novell, Inc. all of my right, title, and interest, if any, in and to all Novell Intellectual Property, together with all domestic and foreign rights in such Novell Intellectual Property, including copyrights, trade secrets, trademarks, patents, and patent applications. I understand and agree that the decision whether or not to commercialize or market any Novell Intellectual Property is within Novell's sole discretion. If I am employed by Novell in California, I certify that I have read and signed the attached Exhibit B.

10. Cooperation. I agree to cooperate with Novell during and after my employment to secure full ownership, benefit, and

protection for Novell, Inc. in the Novell Intellectual Property, including patent, copyright, or other Intellectual Property protection, at Novell's expense and discretion. I promise and agree to execute all papers and documents and do such other actions reasonably requested by Novell at any time during employment, without additional compensation, but at Novell's expense. If Novell is unable, because of my mental or physical state, geographic distance, or for any other reason, to obtain my approval or signature required under this provision, then I appoint Novell and its duly authorized officers as my agent and attorney-in-fact to act in my place for the purpose of accomplishing such approval or signature with the same legal effect as if I had executed it.

11. Prior Intellectual Property.

a. The following is a complete list of all Intellectual Property made, created, authored, conceived, or reduced to practice by me, either alone or jointly with others, at any time prior to my employment with Novell, and that I desire to be excluded from the definition of Novell Intellectual Property under this Agreement ("Prior Intellectual Property"). IF I DO NOT PROVIDE ANY INFORMATION IN THIS SECTION 11.A, I AM REPRESENTING THAT THERE IS NO INTELLECTUAL PROPERTY THAT I DESIRE TO EXCLUDE FROM THE DEFINITION OF NOVELL INTELLECTUAL PROPERTY.

(Use additional sheets if necessary.)

b. If in the course of my employment with Novell, I incorporate Prior Intellectual Property (or other Intellectual Property that I own or in which I have an interest) into a Novell product, process, machine, service, or materials ("Novell Works"), Novell is granted and has a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, manufacture, import, have imported, use, sell, offer to sell, modify, reproduce, display, perform, and distribute such Intellectual Property, as part of or in connection with such Novell Works (including future versions and successors to such Novell Works), together with the right to directly or indirectly sublicense the foregoing license. This license will survive any termination of this Agreement or my employment with Novell.

12. Novell Policies and Procedures. I agree to abide by Novell's policies and procedures, including, but not limited to, the Code of Business Ethics, as made available to employees from time to time.

13. Compliance not Contingent upon Additional Consideration. I have not been promised, and will not claim, any additional or special payment for compliance with the covenants and agreements contained herein.

14. Conflicts of Interest. I agree not to engage in any business opportunity outside Novell during my employment that conflicts or competes with, or may conflict or compete with, any Novell business interests or reasonably anticipated business interests without first obtaining approval from Novell's Employee Conflicts of Interest Committee. Novell may refuse approval in its sole discretion based on potential conflicts with the legitimate interests of Novell.

Intellectual Property and Non-Disclosure Agreement

15. Notification of New Employer. In the event that I leave the employ of Novell, I grant consent to notification by Novell to my new employer or any other entity with which I am affiliated about my rights and obligations under this Agreement.

16. Non-solicitation of Customers or Employees. For a period of one (1) year following the effective date of the termination of my employment with Novell (regardless of the reason for my termination), I agree as follows:

a. Non-solicitation of Employees. Unless I receive prior written permission from Novell's Senior Vice President of People, I shall not, directly or indirectly, alone or as a partner, joint-venturer, consultant, officer, director, investor, employee, agent, independent contractor, or otherwise on behalf of any person or entity, with respect to any Novell Employee (as defined below), (i) recruit or attempt to recruit the employment of a Novell Employee; (ii) solicit or attempt to solicit a Novell Employee; (iii) interfere with Novell's employment of or attempt to interfere with Novell's employment of a Novell Employee; (iv) endeavor to entice away a Novell Employee from Novell; or (v) participate in or become involved in any communications or contacts with any Novell Employee (or any person acting on such Novell Employee's behalf), without regard to whether I, the Novell Employee, or anyone acting on the Novell Employee's behalf initiates such communications or contacts, concerning (1) potential employment with any person or entity other than the Company, (2) terms and conditions of employment with any person or entity other than the Company or (3) job opportunities with any person or entity other than Company. I further agree (if employed by Novell in any state other than California), that I shall not, directly or indirectly, alone or as a partner, joint-venturer, consultant, officer, director, investor, employee, agent, independent contractor, or otherwise on behalf of any person or entity, hire any Novell Employee or attempt to hire any Novell Employee.

b. For purposes of this Section 16, "Novell Employee" means: (i) any employee of Novell; or (ii) any person whose employment with Novell terminated for any reason within three months of any activity contemplated by this section.

c. Non-solicitation of Customers. Unless I receive prior written permission from Novell's Senior Vice President of People (or his or her successor), I shall not, directly or indirectly, alone or as a partner, joint-venturer, consultant, officer, director, investor, employee, agent, independent contractor, or otherwise on behalf of any person or entity, with respect to the business or prospective business of any Novell Customer/Partner (as defined below), (i) solicit, divert, or take away from Novell such business or prospective business; (ii) attempt to solicit, divert, or take away from Novell such business or prospective business; (iii) assist any person or entity to solicit, divert, to take away from Novell such business or prospective business; (iv) attempt to assist any person or entity to solicit, divert, to take away from Novell such business or prospective business; (v) solicit, attempt to solicit, assist any person or entity to solicit, or attempt to assist any person or entity to solicit the business of any entity that is a prospective Novell Customer/Partner, as of the effective date of my termination of employment from Novell; or (vi) interfere with, attempt to interfere with, assist any person or entity to interfere with, or attempt to assist any person or entity to interfere with any existing relationships between Novell and any Novell Customer/Partner.

d. For purposes of this Section 16, "Novell Customer/Partner" means any person or entity (other than a

Novell Employee, with which Novell conducts business, for which Novell performs services, or with which Novell maintains a business relationship including, without limitation, any customer, partner, licensee, supplier, vendor, distributor, dealer, or manufacturer. For Novell Employees in California, Novell Customers/Partners are limited to those entities listed above whose business dealings with Novell invoke, involve, or require the use by Novell of Confidential Information.

17. Waiver. No waiver by either party of any breach by the other party of any provision of this Agreement will be deemed or construed to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

18. Applicability to Successor. This Agreement will be binding upon and pass to Novell's successors and assigns and to my heirs, legal representatives, and assigns.

19. Entire Agreement. This Agreement sets forth the entire agreement and understanding between Novell and me relating to the subject matter herein and supersedes all prior discussions and agreements between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party to be charged, and in Novell's case, by an officer of Novell. Any subsequent change or changes in my duties, salary, or compensation will not affect the validity or scope of this Agreement.

20. Severability. If any portion of this Agreement is held by a court of law to be invalid, unenforceable, or void, such holding will not invalidate the remainder of this Agreement or any other part of it. In that event, I agree that the portion held to be invalid, unenforceable, or void, will, if possible, be deemed amended or reduced in scope so that it becomes valid and enforceable.

21. Survival of Terms. The terms of this Agreement will continue following the termination of my employment with Novell as outlined in the various sections.

22. Governing Law; Consent to Personal Jurisdiction. In the event of any claim arising from or relating to this Agreement or my employment with Novell:

a. if I reside in and work for Novell in the State of California:

- (i) I agree that any such claim will be governed by the laws of the State of California;
- (ii) I consent to the jurisdiction of the state and federal courts located in California; and
- (iii) I agree that the proper and acceptable venue for any such claim will be the California judicial district in which I last worked when employed by Novell; or

b. If I do not reside in and work for Novell in the State of California:

- (i) I agree that any such claim will be governed by the laws of the State of Utah;
- (ii) I consent to the jurisdiction of the state and federal courts located in Utah; and
- (iii) I agree that the proper and acceptable venue for any such claim will be the Utah judicial district in which I last worked when employed by Novell or

where Novell's principal Utah office is located at the time any such claim is filed.

23. Equitable Relief. Anything in this Agreement to the contrary notwithstanding, I acknowledge that my breach of this Agreement may cause irreparable injury to Novell and Novell will be entitled to extraordinary relief in any proper court, including temporary restraining orders, preliminary injunctions, and permanent injunctions, without the necessity of posting bond or security.

24. Representations. I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I have not entered into, and I agree I will not enter into, any oral or written agreement in conflict with this Agreement or my employment by Novell.

25. Certification. I certify that I have carefully read and considered all provisions of this Agreement and I agree to be bound by them. I further agree that all of the restrictions set forth are fair and reasonably required to protect Novell's legitimate interests.

26. "At Will" Employment. I AGREE WITH AND ACKNOWLEDGE NOVELL'S "AT WILL" EMPLOYMENT POLICY, WHICH IS THAT NOVELL RESERVES THE RIGHT TO DISCONTINUE MY EMPLOYMENT AT ANY TIME FOR ANY REASON, OR NO REASON, WITHOUT PRIOR NOTICE TO ME, AND THAT I RESERVE THE RIGHT TO DISCONTINUE EMPLOYMENT AT ANY TIME FOR ANY REASON, OR NO REASON, WITHOUT MY NOTICE TO NOVELL. I AGREE THAT NOTHING IN THIS AGREEMENT WILL BE CONSTRUED AS A LIMITATION OF MY OR NOVELL'S RIGHTS TO TERMINATE MY EMPLOYMENT WITH NOVELL AT ANY TIME FOR ANY REASON OR NO REASON, WITHOUT NOTICE.

Employee

Signature of Employee

Printed Name

Date

Office Location

Accepted:

Signature of Authorized NOVELL Representative

Printed Name

Title

Date

Intellectual Property and Non-Disclosure Agreement

Page 4

Exhibit A
Certification Upon Termination of Employment
Statement Confirming Obligations as an Employee of Novell, Inc.

I, Chris Brookhart, acknowledge that I entered into a Novell, Inc. Intellectual Property, Non-Disclosure and Non-Solicitation Agreement in connection with my work at Novell (the "Agreement"), and I have certain obligations to Novell. Under the Agreement I have obligations to keep confidential all Confidential Information, as defined in the Agreement, which includes, without limitation, information, records, customer lists, computer programs, marketing materials, sales data and other technical or business information owned by Novell that I have known or have had in my possession while employed at Novell. I confirm that I have complied with these obligations and that I will continue to comply with these obligations following the termination of my employment with Novell, and that I have turned over to Novell all originals and copies of such Confidential Information that has been in my possession.

I further agree that under the Agreement any intellectual property, inventions, products or product features or improvements ("Novell Intellectual Property") that I created or helped to create in the course of my employment belongs solely to Novell and that I have made or will make no claim on it. I confirm that I have fully disclosed to Novell all such Novell Intellectual Property and that I have turned over to Novell all records, notes, drawings, descriptions, reports or other materials, and all copies thereof, relating to any such Intellectual Property.

I further agree that I will provide a copy of the Agreement to any prospective new employer or other entity with which I am or may be affiliated either if requested by such employer or entity, or if there is any reasonable chance that my prospective employment or affiliation with that employer or entity could put me at risk of breaching this Agreement or any other Novell agreement.

I further agree, for a period of one (1) year following the termination of my Novell employment, that I will not engage in the activities prohibited by Section 16 of the Agreement respecting solicitation of Novell customers and employees.

I acknowledge that the above is an incomplete summary of my obligations and Novell's rights under the Agreement, and does not modify the Agreement in any way.

Chris Brookhart
Employee's Signature

Chris Brookhart
Employee's Name Printed

May 1, 2006
Date

Intellectual Property and Non-Disclosure Agreement

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Exhibit B

(California Employees Only)

Acknowledgment Of Receipt Of Notice Pursuant To Labor Code §§ 2870-2872

I, _____, acknowledge that I have hereby received written notice of my rights and obligations under the provisions of Section 2870(a) of the California Labor Code, which provides:

Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) Result from any work performed by the employee for the employer.

I further acknowledge that I have hereby received written notice that the Novell, Inc. Intellectual Property, Non-Disclosure and Non-Solicitation Agreement (the "Agreement") that I have signed in connection with my work at Novell and to which this Exhibit is attached does not apply to an invention which qualifies fully under the provisions of Section 2870 of the California Labor Code.

Employee's Signature

Employee's Name Printed

Date

Intellectual Property and Non-Disclosure Agreement

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