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8 *Attorneys for Plaintiff*  
9 BASCOM RESEARCH, LLC

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

14 BASCOM RESEARCH, LLC, a Delaware  
15 Corporation,

16 Plaintiff,

17 v.

18 NOVELL, INC., a Utah Corporation,

19 Defendant.

Case No.: 3:12-CV-06295-SI

**FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Bascom Research, LLC (“Bascom”) files this Complaint for Patent Infringement  
2 and Jury Demand against Defendant Novell, Inc. (“Defendant” or “Novell”) and alleges as  
3 follows:

4 **THE PARTIES**

5 1. Bascom is a Virginia limited liability company organized and existing under the laws of  
6 Virginia having a principal place of business at 7025 Elizabeth Drive, McLean, Virginia 22101.

7  
8 2. On information and belief, Defendant is a Utah corporation organized and existing  
9 under the laws of Utah, with its principal place of business at 1800 South Novell Place, Provo, Utah  
10 84606, and with additional United States offices in Atlanta, Georgia, Cambridge, Massachusetts,  
11 Detroit, Michigan and Waltham, Massachusetts.

12 **JURISDICTION AND VENUE**

13 3. This action arises under the Patent Act, 35 U.S.C. § 101 *et seq.* This Court has original  
14 jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331 and 1338.

15 4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b).

16  
17 5. This Court has personal jurisdiction over Defendant. Upon information and belief,  
18 Defendant does business in this District and has, and continues to, infringe and/or induce the  
19 infringement in Virginia and in this District. In addition, the Court has personal jurisdiction over  
20 Defendant because it has established minimum contacts with the forum and the exercise of jurisdiction  
21 would not offend traditional notions of fair play and substantial justice.

22 **FACTS COMMON TO ALL COUNTS**

23  
24 6. On September 19, 2006, U.S. Patent No. 7,111,232 (“the ‘232 Patent”), entitled  
25 METHOD AND SYSTEM FOR MAKING DOCUMENT OBJECTS AVAILABLE TO USERS OF  
26

1 A NETWORK, was issued to Thomas Layne Bascom. A true and correct copy of the '232 Patent is  
2 attached to this Complaint as Exhibit A and is incorporated by reference herein.

3 7. All rights, title, and interest in the '232 Patent have been assigned to Bascom, which is  
4 the sole owner of the '232 Patent.

5 8. On November 21, 2006, U.S. Patent No. 7,139,974 ("the '974 Patent"), entitled  
6 FRAMEWORK FOR MANAGING DOCUMENT OBJECTS STORED ON A NETWORK, was  
7 issued to Thomas Layne Bascom. A true and correct copy of the '974 Patent is attached to this  
8 Complaint as Exhibit B and is incorporated by reference herein.

9 9. The '232 Patent is generally directed towards a web-based system for distributing  
10 relevant content to its users. This system provides users with relevant content using the link  
11 relationships between content. As a result, entities or groups are provided with the ability to  
12 communicate relevant information to their employees or members as those members or employees  
13 access such content.

14 10. All rights, title, and interest in the '974 Patent have been assigned to Bascom, which is  
15 the sole owner of the '974 Patent.

16 11. The '974 Patent is generally directed towards web-based system for managing content  
17 using the relationships between content. Such link relationships are stored in link directories.  
18 Additionally, the invention provides a framework for creating and presenting such link relationships in  
19 such a way that users are provided with relevant content.

20 12. On January 2, 2007, U.S. Patent No. 7,158,971 ("the '971 Patent"), entitled METHOD  
21 FOR SEARCHING DOCUMENT OBJECTS ON A NETWORK, was issued to Thomas Layne  
22 Bascom. A true and correct copy of the '971 Patent is attached to this Complaint as Exhibit C and is  
23 incorporated by reference herein.  
24  
25  
26  
27

1 13. All rights, title, and interest in the '971 Patent have been assigned to Bascom, which is  
2 the sole owner of the '971 Patent.

3 14. The '971 Patent is generally directed towards web-based methods for searching and  
4 identifying link relationships between content. This invention involves an initial search then  
5 narrowing down the information using link relationships between the content.

6 15. On information and belief, Defendant makes, uses and/or sells products marketed to the  
7 public under the name "Vibe" (the "Vibe Products").

8 16. The Vibe Products provide a social networking platform that allows its users to create  
9 their own personal profiles, link with their co-workers, join workspaces, and engage a variety of  
10 content. The Vibe Products are built on a social graph which connects the users of the Vibe Products  
11 which is accessible via the Vibe Application Program Interface (API). The Vibe API uniformly  
12 represents objects in the graphs and the connections between them. Vibe generally uses Java Web  
13 Services which provides a set of operations that client programs can use to exchange information with  
14 Vibe.  
15

16 17. Every object in the social graph has the ability to be connected to other objects. For  
17 example, a user can create a profile, join a workspace, manage files, participate in discussion threads,  
18 post to wikis, and interact with workflows. The Web services operations generally pass and return  
19 data within model objects as defined within the Kablink Vibe software. Each object has a variety of  
20 fields that correspond to data relating to the object. For example, profile\_getUser accepts a user  
21 identifier and returns information about a Vibe user.  
22

23 18. All of the objects in the social graph are linked to each other via connections. In some  
24 circumstances, these connections involve the tracking of groups, people and content. In other  
25 circumstances, connections are managed through workspaces and content management. Connections  
26  
27

1 can be established for anyone who is registered to use the Vibe Products and for any content they  
2 create. Content created by a user is typically associated with a particular space or group and is public  
3 in the community and searchable. Additional information regarding the objects and connections can  
4 be found in the Vibe User Guide and the Vibe Developer Guide.

5 19. Upon information and belief, there are additional objects and related information  
6 available to developers employed by Novell that are not available to the general public. Accordingly,  
7 the above listed objects and related information are exemplary and not limiting.  
8

9 20. The Vibe Products contain an activity stream. This stream allows users to share content  
10 and insights to the various connections. The activity stream is a mechanism which updates based on  
11 the people, folders and activities associated with the user. The activity stream can be customized to  
12 include updates from any combination of folders, workspaces, favorites or followed places and  
13 people.  
14

15 21. Notably, the Vibe API and Kablink Vibe are primarily marketed to third-party  
16 developers. However, any description of these mechanisms are not intended to be limiting. Instead,  
17 the descriptions of these mechanisms are intended to demonstrate the existence of components that  
18 are contained within the backend of the Vibe Products. Thus, the analysis provided herein is relevant  
19 to the Vibe Products as a whole and is not limited to third-party development tools. Furthermore,  
20 upon information and belief, developers employed by Novell utilize similar, if not the same  
21 mechanisms, in order to develop and maintain the Vibe Products.  
22

23 22. Novell requires its users to activate an account in order to use Vibe Products.  
24 Activation of an account requires a user to agree to terms and conditions that dictate how they use the  
25 Vibe Products. Vibe generates a unique profile that is generally accessible utilizing the Vibe API for  
26 each account which contains the personal information of the user. Vibe also generates connections  
27

1 for each user and associates the user with other objects in the social graph. The establishment of  
2 these objects and connections may generate activity on the Vibe Products which are viewable to the  
3 user and/or other users of the Vibe Products via the activity stream. Novell provides detailed  
4 instructions to its users regarding all aspects of the Vibe Products which results in the generation of  
5 objects, connections and activity on the Vibe Products. These instructions can be found at  
6 <http://www.novell.com/documentation>.

7  
8 23. Novell also permits third-party developers to access and use the Vibe Products. Novell  
9 requires third-party developers to agree to terms and conditions that dictate how they access and use  
10 the Vibe Products. Third-party developers have access to a variety of objects and connections in  
11 order to build applications and websites that integrate with the Vibe Products. Novell provides  
12 detailed instructions to developers to enable them to integrate with the Vibe Products to create  
13 applications. These instructions can be found in the Vibe Developer Guide.

14  
15 24. On information and belief, Defendant has been and is now infringing the '232 Patent,  
16 the '974 Patent, the '241 Patent and the '971 Patent (collectively "the Patents-In-Suit") in the state of  
17 Virginia, in this judicial District, and elsewhere in the United States by, among other things, making,  
18 using, and operating the system and methods on the Vibe Products. Reference to the Vibe Products  
19 includes the set of development tools and APIs provided to third-party developers.

20  
21 25. By way of non-limiting example, as discussed above, the Vibe Products include a  
22 number of document objects that represent various entities. The Vibe Products also contain a number  
23 of linking relationships that connect the document objects to each other. These linking relationships  
24 contain a variety of attributes that describe the linking relationship. By way of non-limiting example,  
25 these attributes may be found in the social graph of the Vibe Products which is exposed via the Vibe  
26 API and may be manipulated using various API mechanisms. Each of the elements of the social  
27

1 graph, including the link relationships, may be retrieved using a unique identifier and presented based  
2 on the particular implementation of the application. Furthermore, users of the Vibe Products are  
3 given the ability to access objects based on their relationship to other objects. For at least these  
4 reasons, the Vibe Products infringes the Patents-In-Suit.

5 26. In addition to directly infringing the Patents-In-Suit pursuant to 35 U.S.C. § 271(a)  
6 either literally or under the doctrine of equivalents, Defendant indirectly infringes the Patents-In-Suit  
7 pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including its users, to  
8 perform all or some of the steps of the method claims, either literally or under the doctrine of  
9 equivalents, of the Patents-In-Suit.

11 **COUNT I**

12 **(Direct Infringement of the '232 Patent Pursuant to 35 U.S.C. § 271(a))**

13 27. Bascom repeats, realleges, and incorporates by reference, as if fully set forth herein, the  
14 allegations of the preceding paragraphs, as set forth above.

15 28. Bascom is informed and believes Defendant has infringed and continues to infringe,  
16 and has actively and knowingly induced and continues to actively and knowingly induce infringement  
17 of one or more claims of the '232 Patent, all in violation of 35 U.S.C. § 271(a)(b).

18 29. Bascom is informed and believes Defendant's infringement is based upon literal  
19 infringement or, in the alternative, infringement under the doctrine of equivalents.

20 30. Defendant's acts of making, using, importing, selling, and/or offering for sale  
21 infringing products and services have been without the permission, consent, authorization or license of  
22 Bascom.

23 31. Defendant's infringement includes, but is not limited to, the manufacture, use, sale,  
24 importation and/or offer for sale of Defendant's products and services, including but not limited to the  
25 Vibe Products, which embody the patented invention of the '232 Patent.  
26  
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1 32. Bascom is informed and believes that as a result of Defendant's unlawful activities,  
2 Bascom has suffered and will continue to suffer irreparable harm for which there is no adequate  
3 remedy at law. Accordingly, Bascom is entitled to preliminary and/or permanent injunctive relief.

4 33. Bascom is informed and believes that Defendant's infringement of the '232 Patent has  
5 injured and continues to injure Bascom in an amount to be proven at trial.

6  
7 **COUNT II**  
8 **(Indirect Infringement of the '232 Patent Pursuant to 35 U.S.C. § 271(b))**

9 34. Bascom repeats, realleges, and incorporates by reference, as if fully set forth herein, the  
10 allegations of the preceding paragraphs, as set forth above.

11 35. Bascom is informed and believes, and based thereon alleges, that Defendant has  
12 induced and continues to induce others to infringe at least claims 4, 5, 6, 11, 12, 13, 14, 15 of the '232  
13 Patent under 35 U.S.C. § 271(b).

14 36. Defendant has had knowledge of the '232 Patent at least as of the time it learned of this  
15 action for infringement, which was filed on October 3, 2012. Despite this knowledge, Defendant  
16 continues to infringe one or more claims of the '232 Patent.

17 37. In addition to directly infringing the '232 Patent, Defendant indirectly infringes the  
18 '232 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including  
19 but not limited to its users and developers, to perform some of the steps of the method claims, either  
20 literally or under the doctrine of equivalents, of the '232 Patent. Defendant knew or was willfully  
21 blind to the fact that it was inducing infringement by practicing in conjunction with others, including  
22 users and developers, one or more method claims of the '232 Patent.

23 38. Defendant knowingly and actively aided and abetted the direct infringement of the '232  
24 Patent by instructing and encouraging its users and developers to use the Vibe Products. Such  
25 instructions and encouragement include but are not limited to, advising third parties to use the Vibe  
26  
27

1 Products in an infringing manner; providing a mechanism through which third parties may infringe the  
2 '232 Patent, specifically through the use of the Vibe Products; advertising and promoting the use of  
3 the Vibe Products in an infringing manner; and distributing guidelines and instructions to third parties  
4 on how to use the Vibe Products in an infringing manner.

5 39. Novell regularly updates and maintains Novell Vibe user guides. For example, User  
6 Guide Vibe 3.3 (attached as Exhibit D) provides demonstration, instruction, and technical assistance to  
7 users to help them use the Vibe Products, including:  
8

- 9 • Workspaces (*see e.g.* Exhibit D at 54 instructing users on “Creating a New  
10 Workspace”),
- 11 • What’s New (*see e.g.* Exhibit D at 59 instructing users on “Using the What’s  
12 New Tab”), and
- 13 • Files (*see e.g.* Exhibit D at 117 instructing users on “Uploading a Single File”).

14 40. Novell provides promotional materials on its website that encourage users to use the  
15 Vibe Products. For example, Novell states, “With the What’s New activity stream, you get a quick  
16 view of what’s going on in your teams, and can tap into good ideas by following others and topics that  
17 matter to your work..” *See e.g.* [http://www.novell.com/products/vibe/features/#social\\_tools](http://www.novell.com/products/vibe/features/#social_tools) (attached  
18 at Exhibit E).

19 41. Novell regularly updates and maintains the Novell Vibe Resource Library at  
20 <http://www.novell.com/products/vibe/resource-library/> (attached as Exhibit F) which provides  
21 instruction, and technical assistance to users to help them use the Vibe Products. For example, Novell  
22 states, “Video & Audio... Discover how Novell Vibe can really come to life in your organization” and  
23 “Use Cases: Get the most out of Novell Vibe. Find out how you can use Vibe to solve a number of  
24 common business challenges.” Attached Exhibits G ([http://www.novell.com/products/vibe/resource-](http://www.novell.com/products/vibe/resource-library/videos.html)  
25 [library/videos.html](http://www.novell.com/products/vibe/resource-library/videos.html)) and H ([http://www.novell.com/products/vibe/resource-](http://www.novell.com/products/vibe/resource-library/usecases.html)  
26 [library/usecases.html](http://www.novell.com/products/vibe/resource-library/usecases.html))  
27 provide examples of such Video, Audio and Use Cases.

1 42. Novell provides demonstration, instruction, and technical assistance and a set of  
2 programming interfaces and tools to encourage developers to integrate their applications with the Vibe  
3 Products. *See e.g.* Developer Guide Vibe 3.3 (attached as Exhibit I). For example, Exhibit I at 20  
4 provides instructions to developers regarding “Attaching Files.”

5 43. The reasonable inference to be drawn from the facts set forth this Amended Complaint  
6 is that Novell actively and intentionally maintains and updates its websites and documentation,  
7 including its Help Center and Developers websites and documentation, to promote its products and  
8 services to encourage potential users and developers to use Vibe Products in the manner described by  
9 Bascom.

10 44. The further reasonable inference to be drawn from the facts set forth in this Amended  
11 Complaint is that Novell actively updates its websites and documentation, including its Help Center  
12 and Developers websites and documentation, to promote the Vibe Products, including Workspaces,  
13 What’s New and Files, to encourage users and developers to practice the methods taught in the ‘232  
14 Patent.

15  
16  
17 **COUNT III**  
18 **(Direct Infringement of the ‘974 Patent Pursuant to 35 U.S.C. § 271(a))**

19 45. Bascom repeats, realleges, and incorporates by reference, as if fully set forth herein, the  
20 allegations of the preceding paragraphs, as set forth above.

21 46. Bascom is informed and believes Defendant has infringed and continues to infringe,  
22 and has actively and knowingly induced and continues to actively and knowingly induce infringement  
23 of one or more claims of the ‘974 Patent, all in violation of 35 U.S.C. § 271(a)(b).

24 47. Bascom is informed and believes Defendant’s infringement is based upon literal  
25 infringement or, in the alternative, infringement under the doctrine of equivalents.  
26  
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1 48. Defendant's acts of making, using, importing, selling, and/or offering for sale  
2 infringing products and services have been without the permission, consent, authorization or license of  
3 Bascom.

4 49. Defendant's infringement includes, but is not limited to, the manufacture, use, sale,  
5 importation and/or offer for sale of Defendant's products and services, including but not limited to the  
6 Vibe Products, which embody the patented invention of the '974 Patent.

7  
8 50. Bascom is informed and believes that as a result of Defendant's unlawful activities,  
9 Bascom has suffered and will continue to suffer irreparable harm for which there is no adequate  
10 remedy at law. Accordingly, Bascom is entitled to preliminary and/or permanent injunctive relief.

11 51. Bascom is informed and believes that Defendant's infringement of the '974 Patent has  
12 injured and continues to injure Bascom in an amount to be proven at trial.

13  
14 **COUNT IV**  
**(Indirect Infringement of the '974 Patent Pursuant to 35 U.S.C. § 271(b))**

15 52. Bascom repeats, realleges, and incorporates by reference, as if fully set forth herein, the  
16 allegations of the preceding paragraphs, as set forth above.

17 53. Bascom is informed and believes, and based thereon alleges, that Defendant has  
18 induced and continues to induce others to infringe at least claims 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13,  
19 18, 19, 20, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 45 of the '974 Patent under 35 U.S.C. § 271(b).

20  
21 54. Defendant has had knowledge of the '974 Patent at least as of the time it learned of this  
22 action for infringement, which was filed on October 3, 2012. Despite this knowledge, Defendant  
23 continues to infringe one or more claims of the '974 Patent.

24 55. In addition to directly infringing the '974 Patent, Defendant indirectly infringes the  
25 '974 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including  
26 but not limited to its users and developers, to perform some of the steps of the method claims, either  
27

1 literally or under the doctrine of equivalents, of the '974 Patent. Defendant knew or was willfully  
2 blind to the fact that it was inducing infringement by practicing in conjunction with others, including  
3 users and developers, one or more method claims of the '974 Patent.

4 56. Defendant knowingly and actively aided and abetted the direct infringement of the '974  
5 Patent by instructing and encouraging its users and developers to use the Vibe Products. Such  
6 instructions and encouragement include but are not limited to, advising third parties to use the Vibe  
7 Products in an infringing manner; providing a mechanism through which third parties may infringe the  
8 '974 Patent, specifically through the use of the Vibe Products; advertising and promoting the use of  
9 the Vibe Products in an infringing manner; and distributing guidelines and instructions to third parties  
10 on how to use the Vibe Products in an infringing manner.

12 57. Novell regularly updates and maintains Novell Vibe user guides. For example, User  
13 Guide Vibe 3.3 (attached as Exhibit D) provides demonstration, instruction, and technical assistance to  
14 users to help them use the Vibe Products, including:

- 15 • Workspaces (*see e.g.* Exhibit D at 53 providing instructions to users, including  
16 “Your Novell Vibe site is made up of various workspaces. Workspaces are  
17 designated areas where people can work together to accomplish tasks. Vibe  
18 supports multiple types of workspaces, including personal workspaces, where you  
19 can store items such as your personal files, calendars, and tasks; and team  
20 workspaces, where you can collaborate with team members by sharing ideas,  
21 files, and more. Other useful types of workspaces are also available for you to  
22 use.”),
- 23 • What’s New (*see e.g.* Exhibit D at 26 providing instructions to users, including  
24 “Click What’s New in the Action toolbar from any folder or workspace in Vibe.  
25 By clicking the appropriate category in the What’s New navigation panel on the  
26 left side of the page, you can view new entries for any of the following  
27 categories”), and
- 28 • Files (*see e.g.* Exhibit D at 117 instructing users on “Uploading a Single File”).

58. Novell provides promotional materials on its website that encourage users to use the  
Vibe Products. For example, Novell states, “Stay updated and in-the-loop with activity streams.

1 Tapping into good ideas and knowing what's going on around the organization is a key ingredient to  
2 driving innovation and better business results. Novell Vibe includes an activity stream that brings  
3 updates on what's new from people, folders and activities you choose to follow in your organization.  
4 And users can post quick updates via a micro-blog so their team or personal followers can keep track  
5 of their activities or status." *See e.g.* Exhibit K. For example, Novell Vibe: Top Ten Ways to Create  
6 Happy, Productive Teams (attached as Exhibit M) states: "Collaboration means different things to  
7 different people. For managers, it's about increasing productivity and supporting mobility. For teams,  
8 it's about working together on projects, managing and sharing documents, and retaining knowledge.  
9 Novell Vibe delivers on both fronts, helping you bring people, projects and processes together in one  
10 secure space to enhance productivity—no matter where your teams are or what devices they use."

12 59. Novell regularly updates and maintains the Novell Vibe Resource Library at  
13 <http://www.novell.com/products/vibe/resource-library/> (attached as Exhibit F) which provides  
14 instruction, and technical assistance to users to help them use the Vibe Products such as stating "View  
15 the latest articles and tutorials." Attached Exhibit J provides an example of a "Creating a Workspace"  
16 article.

18 60. Novell provides demonstration, instruction, and technical assistance and a set of  
19 programming interfaces and tools to encourage developers to integrate their applications with the Vibe  
20 Products. *See e.g.* Developer Guide Vibe 3.3 (attached as Exhibit I). For example, Exhibit I at 20  
21 provides instructions to developers regarding "Attaching Files."

23 61. The reasonable inference to be drawn from the facts set forth in this Amended  
24 Complaint is that Novell actively and intentionally maintains and updates its websites and  
25 documentation, including its Help Center and Developers websites and documentation, to promote its  
26  
27  
28

1 products and services to encourage potential users and developers to use Vibe Products in the manner  
2 described by Bascom.

3 62. The further reasonable inference to be drawn from the facts set forth in this Amended  
4 Complaint is that Novell actively updates its websites and documentation, including its Help Center  
5 and Developers websites and documentation, to promote Vibe Products, including Workspaces,  
6 What's New and Files, to encourage users and developers to practice the methods taught in the '974  
7 Patent.  
8

9 **COUNT V**  
10 **(Direct Infringement of the '971 Patent Pursuant to 35 U.S.C. § 271(a))**

11 63. Bascom repeats, realleges, and incorporates by reference, as if fully set forth herein, the  
12 allegations of the preceding paragraphs, as set forth above.

13 64. Bascom is informed and believes Defendant has infringed and continues to infringe,  
14 and has actively and knowingly induced and continues to actively and knowingly induce infringement  
15 of one or more claims of the '971 Patent, all in violation of 35 U.S.C. § 271(a)(b).

16 65. Bascom is informed and believes Defendant's infringement is based upon literal  
17 infringement or, in the alternative, infringement under the doctrine of equivalents.

18 66. Defendant's acts of making, using, importing, selling, and/or offering for sale  
19 infringing products and services have been without the permission, consent, authorization or license of  
20 Bascom.  
21

22 67. Defendant's infringement includes, but is not limited to, the manufacture, use, sale,  
23 importation and/or offer for sale of Defendant's products and services, including but not limited to the  
24 Vibe Products, which embody the patented invention of the '971 Patent.  
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1 68. Bascom is informed and believes that as a result of Defendant's unlawful activities,  
2 Bascom has suffered and will continue to suffer irreparable harm for which there is no adequate  
3 remedy at law. Accordingly, Bascom is entitled to preliminary and/or permanent injunctive relief.

4 69. Bascom is informed and believes that Defendant's infringement of the '971 Patent has  
5 injured and continues to injure Bascom in an amount to be proven at trial.

6 **COUNT VI**  
7 **(Indirect Infringement of the '971 Patent Pursuant to 35 U.S.C. § 271(b))**

8 70. Bascom repeats, realleges, and incorporates by reference, as if fully set forth herein, the  
9 allegations of the preceding paragraphs, as set forth above.

10 71. Bascom is informed and believes, and based thereon alleges, that Defendant has  
11 induced and continues to induce others to infringe at least claim 1 of the '971 Patent under 35 U.S.C. §  
12 271(b).

13 72. Defendant has had knowledge of the '971 Patent at least as of the time it learned of this  
14 action for infringement, which was filed on October 3, 2012. Despite this knowledge, Defendant  
15 continues to infringe one or more claims of the '971 Patent.

16 73. In addition to directly infringing the '971 Patent, Defendant indirectly infringes the  
17 '971 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including  
18 but not limited to its users and developers, to perform some of the steps of the method claims, either  
19 literally or under the doctrine of equivalents, of the '971 Patent. Defendant knew or was willfully  
20 blind to the fact that it was inducing infringement by practicing in conjunction with others, including  
21 users and developers, one or more method claims of the '971 Patent.

22 74. Defendant knowingly and actively aided and abetted the direct infringement of the '971  
23 Patent by instructing and encouraging its users and developers to use of the Vibe Products. Such  
24 instructions and encouragement include but are not limited to, advising third parties to use the Vibe  
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1 Products in an infringing manner; providing a mechanism through which third parties may infringe the  
2 '971 Patent, specifically through the use of the Vibe Products; advertising and promoting the use of  
3 the Vibe Products in an infringing manner; and distributing guidelines and instructions to third parties  
4 on how to use the Vibe Products in an infringing manner.

5 75. Novell regularly updates and maintains Novell Vibe user guides. For example, User  
6 Guide Vibe 3.3 (attached as Exhibit D) provides demonstration, instruction, and technical assistance to  
7 users to help them use the Vibe Products, including:  
8

- 9 • Workspaces (*see e.g.* Exhibit D at 53 providing instructions to users, including  
10 “Your Novell Vibe site is made up of various workspaces. Workspaces are  
11 designated areas where people can work together to accomplish tasks. Vibe  
12 supports multiple types of workspaces, including personal workspaces, where you  
13 can store items such as your personal files, calendars, and tasks; and team  
14 workspaces, where you can collaborate with team members by sharing ideas,  
15 files, and more. Other useful types of workspaces are also available for you to  
16 use.”),
- 17 • What’s New (*see e.g.* Exhibit D at 26 providing instructions to users, including  
18 “Click What’s New in the Action toolbar from any folder or workspace in Vibe.  
19 By clicking the appropriate category in the What’s New navigation panel on the  
20 left side of the page, you can view new entries for any of the following  
21 categories”),
- 22 • Files (*see e.g.* Exhibit D at 117 instructing users on “Uploading a Single File”),  
23 and
- 24 • Search (*see e.g.* Exhibit D at 29-36 instructing users on “Searching for  
25 information”).

26 76. Novell provides promotional materials on its website that encourage users to use the  
27 Vibe Products. For example, Exhibit L states, “With its unique combination of next-generation  
28 collaboration tools and powerful document management capabilities, Novell Vibe™ is equal to the  
task. Deploy it today and see how it can boost productivity and streamline projects like never  
before....Users and teams can follow people, folders and activities; see real-time information feeds;  
collect, refine and aggregate ideas and knowledge in wikis and threaded discussions; communicate

1 ideas through blogs; tap into others' insights with surveys; post quick activity and status updates with  
2 micro-blogs; and quickly find relevant information using powerful search capabilities...Novell Vibe  
3 works hand-in-hand with Novell GroupWise to deliver integrated personal and team productivity to  
4 your organization. With the ability to embed team workspaces in the GroupWise Windows\* client,  
5 drag and drop e-mails and file attachments directly into Novell Vibe, conduct cross-product searches  
6 and view live Novell Vibe content in GroupWise, you'll have the best of both worlds at your  
7 fingertips.”

8  
9 77. Novell regularly updates and maintains the Novell Vibe Resource Library at  
10 <http://www.novell.com/products/vibe/resource-library/> (attached as Exhibit F) which provides  
11 instruction and technical assistance to users to help them use the Vibe Products such as stating “View  
12 the latest articles and tutorials.” Attached Exhibit J provides an example of “Creating a Workspace”  
13 article.

14  
15 78. Novell provides demonstration, instruction, and technical assistance and a set of  
16 programming interfaces and tools to encourage developers to integrate their applications with the Vibe  
17 Products. *See e.g.* Developer Guide Vibe 3.3 (attached as Exhibit I). For example, Exhibit I at 20  
18 provides instructions to developers regarding “Attaching Files.”

19  
20 79. The reasonable inference to be drawn from the facts set forth in this Amended  
21 Complaint is that Novell actively and intentionally maintains and updates its websites and  
22 documentation, including its Help Center and Developers websites and documentation, to promote its  
23 products and services to encourage potential users and developers to use Vibe Products in the manner  
24 described by Bascom.

25  
26 80. The further reasonable inference to be drawn from the facts set forth in this Amended  
27 Complaint is that Novell actively updates its websites and documentation, including its Help Center

1 and Developers websites and documentation, to promote Vibe Products, including Workspaces,  
2 What’s New, Files and Search, to encourage users and developers to practice the methods taught in the  
3 ‘971 Patent.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Bascom prays for judgment and relief as follows:

6 A. An entry of judgment holding Defendant has infringed, is infringing, and has induced  
7 infringement of the ‘232 Patent, ‘974 Patent and ‘971 Patent;

8 B. A preliminary and permanent injunction against Defendant and its officers, employees,  
9 agents, servants, attorneys, instrumentalities, and/or those in privity with them, from infringing, or  
10 inducing the infringement of the ‘232 Patent, ‘974 Patent and/or the ‘971 Patent, and for all further and  
11 proper injunctive relief pursuant to 35 U.S.C. § 283;

12 C. An award to Bascom of such damages as it shall prove at trial against Defendant that is  
13 adequate to fully compensate Bascom for Defendant’s infringement of the ‘232 Patent, ‘974 Patent  
14 and ‘971 Patent, said damages to be no less than a reasonable royalty;

15 D. A finding that this case is “exceptional” and an award to Bascom of its costs and  
16 reasonable attorney’s fees, as provided by 35 U.S.C. § 285;

17 E. An accounting of all infringing sales and revenues; and

18 F. Such further and other relief as the Court may deem proper and just.

19 ///

20 ///

21 ///

Respectfully submitted,

1  
2 Dated: March 29, 2013

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*Attorneys for Defendant*  
Bascom Research, LLC

**DEMAND FOR JURY TRIAL**

Bascom demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: March 29, 2013

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