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8 Attorneys for SUN MICROSYSTEMS, INC.,
 9 MORGAN, LEWIS & BOCKIUS LLP, AND MAKING
 10 A SPECIAL APPEARANCE FOR JEFFREY
 11 KINGSTON, WHO HAS NOT BEEN SERVED

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

15 In re Application of Microsoft Corp.

16 Case No. 06-80038 JF (PVT)

17 **SUPPLEMENTAL DECLARATION OF**
 18 **JAMES N. PENROD IN SUPPORT OF**
 19 **RESPONSE TO MICROSOFT**
 20 **CORPORATION'S OBJECTIONS TO**
 21 **MAGISTRATE'S ORDER**

22 Date: To Be Set
 23 Time: To Be Set
 24 Before: HONORABLE JEREMY FOGEL
 25 Place: To Be Set

26 Complaint Filed: N/A
 27 Trial Date: N/A

1 I, James N. Penrod, declare as follows:

2 1. I am an attorney licensed to practice law in California and New York and am
3 admitted before this Court. I am a partner at Morgan, Lewis & Bockius LLP ("Morgan Lewis").
4 I submit this Declaration in support of Sun Microsystems, Inc., Morgan, Lewis, and, by special
5 appearance, Jeffrey Kingston, in response to Microsoft Corporation's Motion for *De Novo*
6 Review and to Expand the Record. Because Microsoft is treating these matters as consolidated
7 matters, and in an effort to save trees and filing space, the Oracle parties will not file a declaration
8 containing all of the exhibits attached hereto, but will rely on these exhibits as part of the Court's
9 record.

10 2. Attached as Exhibit A to this Declaration is a true and correct copy of the
11 Commission of the European Communities' ("Commission") Motion to Intervene and
12 accompanying memorandum and exhibits.

13 3. Attached as Exhibit B to this Declaration is a true and correct copy of Microsoft
14 Corporation's Response to Memorandum of Commission of the European Communities in
15 Support of Novell, Inc.'s Motion to Quash.

16 4. Attached as Exhibit C to this Declaration is a true and correct copy of Microsoft
17 Corporation's Supplemental Statement Submitted Pursuant to Court Order.

18 5. Attached as Exhibit D to this Declaration is a true and correct copy of the
19 Response of Novell, Inc. to (1) Microsoft's Response to Memorandum of Commission of the
20 European Communities, and (2) Microsoft Corporation Supplemental Statement.

21 6. Attached as Exhibit E to this Declaration is a true and correct copy of the Reply
22 Memorandum of the Commission of the European Communities in Support of Novell, Inc.'s
23 Motion to Quash.

24 7. Attached as Exhibit F to this Declaration is a true and correct copy of Microsoft
25 Corporation's Reply to Response of Novell, Inc.

26 8. Attached as Exhibit G to this Declaration is a true and correct copy of the
27 Memorandum and Order of the United States District Court, District of Massachusetts.

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I declare under penalty of perjury under the laws of the State of California, that foregoing is true and correct, and if called as a witness, I could and would competently testify thereto. This declaration was executed on April 17, 2006 in San Francisco, California.

_____/s/_____

James N. Penrod