

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DANIEL WALLACE,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION;
RED HAT, INC.; and
NOVELL, INC.,

Defendants.

Case No. 1:05-cv-678-RLY-VSS

**MOTION OF DEFENDANTS RED HAT, INC. AND NOVELL, INC.
TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

Defendants Red Hat, Inc. ("Red Hat") and Novell, Inc. ("Novell") previously moved to dismiss the Complaint in this case on July 6, 2005. On the day before, July 5, 2005, Plaintiff had filed a motion for leave to amend his Complaint, which was subsequently granted on July 11, 2005.

Defendants Red Hat and Novell hereby move to dismiss Plaintiff's Amended Complaint. In support of this Motion, Defendants Red Hat and Novell reassert all of the arguments in their brief previously filed on July 6, 2005. Defendants Red Hat and Novell further adopt and join in the arguments asserted by Co-Defendant International Business Machines Corporation in its Brief in Support of its Motion to Dismiss the Amended Complaint (Pleading No. 33), filed July 19, 2005, and its Reply Brief in Support of Motion to Dismiss the Amended Complaint (Pleading No. 39), filed August 5, 2005.

Wherefore, Defendants Red Hat, Inc. and Novell, Inc. respectfully ask that the Amended Complaint be dismissed, with prejudice, without further leave to amend, and for all other proper relief.

Respectfully submitted,

ICE MILLER

s/ Philip A. Whistler

Philip A. Whistler

(philip.whistler@icemiller.com)

Curtis W. McCauley

(curtis.mccauley@icemiller.com)

ICE MILLER

One American Square, Box 82001

Indianapolis, Indiana 46282-0200

Telephone: (317) 236-2100

Counsel for Defendants Red Hat, Inc., and
Novell, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of August, 2005, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Michael Gottschlich
(mgottsch@btlaw.com)
Kendall H. Millard
(kmillard@btlaw.com)
BARNES & THORNBURG

A copy of the foregoing will be sent via first class mail to the following parties:

Daniel Wallace
P.O. Box 572
New Palestine, IN 46163

s/ Philip A. Whistler
Philip A. Whistler