SCO Grp v. Novell Inc Doc. 260 Att. 7

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff/Counterclaim Defendant,

DECLARATION OF KIM MADSEN

v.

NOVELL, INC.,

Defendant/Counterclaim-Plaintiff.

Case No. 2:04CV00139 Honorable Dale A. Kimball Magistrate Judge Brooke C. Wells

I, KIM MADSEN, declare as follows:

- 1. I submit this Declaration in connection with <u>The SCO Group, Inc. v. Novell, Inc.</u>, Case No. 2:04CV00139DAK (D. Utah). I have previously signed a Declaration in connection with this lawsuit and with <u>The SCO Group, Inc. v. International Business Machines Corporation</u>, Case No. 2:03CV0294DAK (D. Utah).
- 2. I describe my education and work history in my previous Declaration, which I incorporate and adopt here.
- 3. In 1995, I was employed as a Manager in the Law and Corporate Affairs group at The Santa Cruz Operation, Inc. ("Santa Cruz"). I worked with substantially with Steve Sabbath, the General Counsel for Santa Cruz.
- 4. As I explained in my previous Declaration, I participated in the negotiation of Santa Cruz's acquisition of the UNIX and UnixWare business from Novell, Inc. ("Novell") as support Santa Cruz's legal team. I worked with and participated in several meetings and teleconferences with the lead negotiators and others on both sides of the transaction.
- 5. In this Declaration I explain Novell's retained interest in royalties paid under certain existing agreements under the Asset Purchase Agreement ("APA) dated September 19, 1995, and Amendment No. 1 thereto dated December 6, 1995. The negotiations and drafting of the APA occurred under a compressed time schedule. To avoid delay, the parties executed the APA with the intent to clarify it, as necessary, through an amendment to be executed on the closing date. That amendment was Amendment No. 1 to the APA.
- 6. Santa Cruz's intent and agreement under the APA and Amendment No. 1 was for Novell to transfer the entire UNIX business, including the UNIX source code and copyrights, to

Santa Cruz except for binary royalties paid under the existing agreements pursuant to which UNIX System V (or "SVRX") licensees were paying such royalties, and which Novell conveyed to Santa Cruz under the APA as part of the UNIX business. Santa Cruz also intended and agreed that it would pay part of its revenues earned from the ongoing UnixWare business if Santa Cruz hit certain annual distribution or sales benchmarks through December 2002. Santa Cruz did not intend or agree to remit any other fees, royalties, or amounts under any other existing or prospective agreements.

- 7. This binary royalty interest that Novell retained was simply a means to lower the purchase price to SCO. My understanding was that Novell had no interest in continuing in the UNIX business at all, and if Santa Cruz could have paid the full purchase price originally proposed by Novell, Novell would not have retained the binary royalty stream or any rights to protect that royalty stream. That context makes it clear that it was the intent of the APA and Amendment No. 1 that Novell retained rights to protect that existing binary royalty stream, but there was no reason or interest for Novell to have broader rights relative the UNIX business and assets it sold Santa Cruz.
- 8. The language of the APA and Amendment No. 1 reflects the foregoing intent and agreement. Section 1.3(a)(i) of the APA states: "It is the intent of parties hereto that all of the Business and all of Seller's backlog, if any, relating to the Business be transferred to Buyer." Section 1.2(b) of the APA provides that Santa Cruz will pass through 100% of the "SVRX Royalties" as defined and described in Section 4.16(a), and Novell will pay Santa Cruz an administrative fee of 5%. Section 4.16(a), in turn, defines "SVRX Royalties" by reference to the SVRX Licenses listed in the Schedule to the APA listing the assets transferred, Schedule 1.1(a).

Indeed, Section 1.2(b) specifies: "Seller and Buyer further acknowledge and agree that Seller is retaining all rights to the SVRX Royalties notwithstanding the transfer of SVRX Licenses to Buyer pursuant hereto, and that Buyer only has a legal title and not an equitable title in such royalties within the meaning of Section 541(d) of the Bankruptcy Code." (Emphasis added.) These provisions reflect Santa Cruz's intent that it would remit only the Royalties paid under the licenses transferred, not Royalties from future licenses not yet in existence (and thus not transferred).

- 9. Section 4.16(a) includes this language: "Following the Closing, Buyer shall administer the collection of all royalties, fees and other amounts due under the SVRX Licenses (as listed in detail under Item VI of Schedule 1.1(a) hereof and referred to herein as 'SVRX Royalties')." Schedule 1.1(a) identifies the "SVRX Licenses" by product name and release, which reflected Santa Cruz's intent to refer to the specific product supplements that identified the licensed product and source code right-to-use fees, sublicensing fees, and per-copy distribution fees that applied to the licensed product, which fees were not identified in any other agreement signed by the licensee.
- 10. As to the reference in Section 4.16(a) to "all royalties, fees and other amounts due under the SVRX Licenses," the parties addressed that part of Section 4.16(a) in Amendment No. 1, which added Section 1.2(e) to the APA. Section 1.2(e) clarified the four categories of fees that Santa Cruz retained notwithstanding Novell's right to receive the binary royalties due under the transferred SVRX Licenses:

- Sections 1.2(e)(i) and 1.2(e)(iv). Santa Cruz would not remit future revenues from contracts to provide support or maintenance to existing SVRX licensees, nor the binary royalties due under Santa Cruz's own SVRX licenses.
- Section 1.2(e)(ii). Santa Cruz would not remit source code fees paid under any amendment to an SVRX License granting an additional copy of the SVRX product or the right to use it on an additional CPU.
- Section 1.2(e)(iii). Santa Cruz would not remit source code fees paid under new SVRX licenses approved by Novell pursuant to Section 4.16(b) of the APA.

Novell had the right to approve new SVRX licenses solely to protect Novell's interest in the existing SVRX binary royalty stream, such as where Santa Cruz might have sold an SVRX licensee a new version of the product (not a UnixWare license) and thereby extinguished the binary royalties due to Novell. If there were any ambiguity on that meaning of Section 1.2(e)(iii), Amendment No. 2 made clear, referring to the APA, that "Novell may not prevent SCO from exercising its rights with respect to SVRX source code in accordance with the Agreement."

Amendment No. 1 made clear that Santa Cruz was not prohibited from amending 11. or entering into new SVRX licenses as an incidental part of licensing UnixWare. UnixWare products are built on the prior versions of the UNIX technology. Accordingly, when Novell and its predecessors licensed a UnixWare product, they also licensed all prior products as an incidental part the license. Amendment No. 1 reflected the parties' intent and understanding that Santa Cruz would continue to license the prior UnixWare and SVRX products with its UnixWare

Page 7 of 33

licenses without additional approvals from Novell and without remitting any payments to Novell. This was simply consistent with the reality of licensing UnixWare.

- 12. The APA and Amendments thereto thus reflect Santa Cruz's intent in entering into the APA: Santa Cruz was obligated to remit to Novell only the binary royalties that were then being paid and that would continue to be paid under the existing agreements pursuant to which UNIX System V licensees were paying such royalties, and which Novell conveyed to Santa Cruz under the APA as part of the UNIX business.
- 13. Novell's rights under the APA and Amendment No. 1 either to approve SVRX licenses or to require SCO to waive or take other actions relative to those licenses related solely to the existing licensees who were paying binary royalties that Santa Cruz would pass through to Novell. Novell had no right to direct SCO to do anything regarding licenses or the UNIX business Novell sold to SCO except to protect the licensing stream that was in place in September 1995.
- 14. I understand that Novell also takes the position that the interests it was granted in the APA and amendments thereto to protect the royalty stream it retained gave Novell protection from competition with respect to competitors such as Sun and Microsoft. The APA and its amendments were never intended to afford Novell any such prospective protections. There was never any discussion or agreement of any kind regarding any such competitive protections. In fact, the only non-compete provision in the APA imposed restrictions on Novell to the benefit of Santa Cruz.
- 15. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Case 2:04-cv-00139-DAK-BCW Document 260-8 Filed 04/09/2007 Page 8 of 33

Executed: December 11,2006

Kimberlee Madsen

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff/Counterclaim defendant,

vs.

CASE NO. 2:04CV00139

NOVELL, INC.,

Defendants/Counterclaim-Plaintiff

DEPOSITION OF KIM MADSEN

Februrary 13, 2007

Pages 1 - 242

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REPORTED BY

LAWRENCE PAUL NELSON, CSR 12144

JOB NO 191725

Esquire Deposition Services
216 E. 45th STREET . NEW YORK, NY 10017 . 1-800-944-9454

	Page 70		Page 72
1	Q. Why don't you turn to Exhibit 51, which is 11:56:28	1	point to in the absence of reading the agreement 11:59:49
2	your declaration, and I'll ask you to look at 11:56:31	2	afresh, yes. 11:59:53
3	whatever you feel comfortable to look at, but I 11:56:47	3	BY MR. BRAKEBILL: 11:59:56
4	believe that paragraphs 8 8 through 12 relate to 11:56:50	4	Q. And how, if at all, do you believe that 12:00:07
5	your beliefs concerning UNIX ownership. 11:57:03	5	recital A and section 1.1(a) of the asset purchase 12:00:09
6	A. Yes. 11:57:08	6	agreement 12:00:14
7	MR. NORMAND: Objection to form. 11:57:09	7	A. And schedule 1.1(a), which is referenced 12:00:15
8	BY MR. BRAKEBILL: 11:57:16	8	in section 1.1(a). 12:00:20
9	Q. Is it a fair statement that well, let 11:57:17	9	Q. How do you believe that recital A, section 12:00:23
10	me ask it this way. What, if any, other provisions 11:57:21	10	1.1(a), and schedule 1.1(a) influenced your personal 12:00:27
11	in the asset purchase agreement did you rely upon in 11:57:25	11	belief that UNIX copyrights did transfer from Novell 12:00:34
12	your belief in this declaration that UNIX copyrights 11:57:27	12	to Santa Cruz? 12:00:44
13	did transfer from Novell to Santa Cruz? 11:57:30	13	A. Because all right, title, and interest 12:00:44
14	A. I don't know. I don't remember which 11:57:39	14	let me get the language here, in and to the assets 12:00:48
15	specific provisions. And I'd be happy to take the 11:57:41	15	relating to the business, which is UNIX and 12:00:52
16	time to review this document if you want me to do 11:57:46	16	UnixWare, were being conveyed to SCO. And included 12:00:58
17	that. 11:57:50	17	in that would have, of course, been the copyrights. 12:01:03
18	Q. I'll give you the opportunity in due 11:57:53	18	Q. And did you understand that in section 12:01:07
19	course. I'm trying to test your memory aside from 11:57:56	19	1.1(a) of the asset purchase agreement that I'll 12:01:10
20	having the document in front of you right now. You 11:57:59	20	refer you to the last sentence, that notwithstanding 12:01:16
21	gave the declaration on UNIX ownership two months 11:58:02		schedule 1.1(a) the assets to be so purchased shall 12:01:21
22	ago; is that right? 11:58:06	22	not include the assets set forth on the schedule 12:01:24
23	MR. NORMAND: Asked and answered. 11:58:08	23	1.1(b)? 12:01:28
24	THE WITNESS: November 4th. 11:58:10	24	MR. NORMAND: Objection to form. 12:01:29
25	BY MR. BRAKEBILL: 11:58:11	25	THE WITNESS: Yes. 12:01:30
	Page 71		Page 73
1	Q. In the last two to three months you gave a 11:58:11	1	BY MR. BRAKEBILL: 12:01:31
1 2	Q. In the last two to three months you gave a 11:58:11 declaration in which it was your personal belief 11:58:14	1 2	BY MR. BRAKEBILL: 12:01:31 Q. And notwithstanding the excluded assets 12:01:32
	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17		BY MR. BRAKEBILL: 12:01:31 Q. And notwithstanding the excluded assets 12:01:32 provision from section 1.1(a), is it still your 12:01:36
2	Q. In the last two to three months you gave a declaration in which it was your personal belief 11:58:14 that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21	2	BY MR. BRAKEBILL: 12:01:31 Q. And notwithstanding the excluded assets 12:01:32 provision from section 1.1(a), is it still your 12:01:36 personal belief that the UNIX copyrights did 12:01:40
2	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23	2	BY MR. BRAKEBILL: 12:01:31 Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:40
2 3 4 5 6	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24	2 3 4 5 6	BY MR. BRAKEBILL: 12:01:31 Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43
2 3 4 5 6 7	Q. In the last two to three months you gave a declaration in which it was your personal belief 11:58:14 that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24	2 3 4 5 6	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44
2 3 4 5 6 7 8	Q. In the last two to three months you gave a declaration in which it was your personal belief 11:58:14 that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28	2 3 4 5 6 7 8	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:46
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2 3 4 5 6 7 8 9	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33	2 3 4 5 6 7 8 9	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:55
2 3 4 5 6 7 8 9 10	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39	2 3 4 5 6 7 8 9 10	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:55 answered.
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2 3 4 5 6 7 8 9 10 11 12 13	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:54	2 3 4 5 6 7 8 9 10 11 12 13	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:55 answered. 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58
2 3 4 5 6 7 8 9 10 11 12 13 14	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:54 transaction and the negotiations surrounding the 11:58:59	2 3 4 5 6 7 8 9 10 11 12 13 14	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:55 answered. 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:54 transaction and the negotiations surrounding the 11:58:59 transaction, the conversations with Novell as to 11:59:03	2 3 4 5 6 7 8 9 10 11 12 13 14 15	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:55 answered. 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 recital A 12:02:06
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:54 transaction and the negotiations surrounding the 11:58:59 transaction, the conversations with Novell as to 11:59:03 what they were conveying and the internal 11:59:06	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:55 answered. 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 recital A 12:02:06 A. Yes. 12:02:06
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:59 transaction and the negotiations surrounding the 11:58:59 transaction, the conversations with Novell as to 11:59:06 conversations as to what we believed we were buying. 11:59:09	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and MR. NORMAND: Objection to form, asked and 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 recital A 12:02:06 A. Yes. 12:02:06 Q aside from section 1.1(a) in schedule 12:01:57
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:59 transaction and the negotiations surrounding the 11:58:59 transaction, the conversations with Novell as to 11:59:03 what they were conveying and the internal 11:59:06 conversations as to what we believed we were buying. 11:59:09 Q. So to make sure that I understand your 11:59:16	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	BY MR. BRAKEBILL: 12:01:31 Q. And notwithstanding the excluded assets 12:01:32 provision from section 1.1(a), is it still your 12:01:36 personal belief that the UNIX copyrights did 12:01:40 transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:55 answered. 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 12:02:02 recital A 12:02:06 12:02:06 Q aside from section 1.1(a) in schedule 12:02:07 1.1(a), is there any other reason for why you 12:02:11
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:59 transaction and the negotiations surrounding the 11:58:59 transaction, the conversations with Novell as to 11:59:03 what they were conveying and the internal 11:59:06 conversations as to what we believed we were buying. 11:59:19 testimony, the provisions that you right now can 11:59:19	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 recital A 12:02:06 A. Yes. 12:02:06 Q aside from section 1.1(a) in schedule 12:02:11 believe that the assets to be so purchased shall not 12:02:14
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:54 transaction and the negotiations surrounding the 11:58:59 transaction, the conversations with Novell as to 11:59:03 what they were conveying and the internal 11:59:06 conversations as to what we believed we were buying. 11:59:19 Q. So to make sure that I understand your 11:59:19 point to in support of your belief that UNIX 11:59:26	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 recital A 12:02:06 A. Yes. 12:02:06 Q aside from section 1.1(a) in schedule 12:02:11 believe that the assets to be so purchased shall not 12:02:14 include the assets set forth in schedule 1.1(b)? 12:02:16
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:54 transaction and the negotiations surrounding the 11:58:59 transaction, the conversations with Novell as to 11:59:03 what they were conveying and the internal 11:59:06 conversations as to what we believed we were buying. 11:59:09 Q. So to make sure that I understand your 11:59:16 testimony, the provisions that you right now can point to in support of your belief that UNIX 11:59:26 copyrights did transfer from Novell to Santa Cruz 11:59:30	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 recital A 12:02:06 A. Yes. 12:02:06 Q aside from section 1.1(a) in schedule 12:02:11 believe that the assets to be so purchased shall not 12:02:16 A. I didn't understand the question. 12:02:23
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:59 transaction and the negotiations surrounding the 11:59:03 what they were conveying and the internal 11:59:06 conversations as to what we believed we were buying. 11:59:09 Q. So to make sure that I understand your 11:59:16 testimony, the provisions that you right now can 11:59:19 point to in support of your belief that UNIX 11:59:30 are recital A in section 1.1(a) of the asset 11:59:33	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 recital A 12:02:06 A. Yes. 12:02:06 Q aside from section 1.1(a) in schedule 12:02:11 believe that the assets to be so purchased shall not 12:02:14 include the assets set forth in schedule 1.1(b)? 12:02:16
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:59 transaction and the negotiations surrounding the 11:59:03 what they were conveying and the internal 11:59:06 conversations as to what we believed we were buying. 11:59:09 Q. So to make sure that I understand your 11:59:16 testimony, the provisions that you right now can 11:59:19 point to in support of your belief that UNIX 11:59:30 are recital A in section 1.1(a) of the asset 11:59:33	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and MR. NORMAND: Objection to form, asked and 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 recital A 12:02:06 A. Yes. 12:02:06 Q aside from section 1.1(a) in schedule 12:02:11 believe that the assets to be so purchased shall not 12:02:14 include the assets set forth in schedule 1.1(b)? 12:02:23 Q. Aside from recital A, aside from section 12:02:24
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. In the last two to three months you gave a declaration in which it was your personal belief that UNIX copyrights did transfer from Novell to 11:58:17 Santa Cruz as part of is the asset purchase 11:58:21 agreement; correct? 11:58:23 A. Correct. 11:58:24 Q. And what provisions, if any, were you 11:58:24 relying upon for your personal belief that the UNIX 11:58:28 copyrights did transfer? 11:58:31 A. Well, I relied on the description of the 11:58:33 business in 1.1(a) and the recital A. I don't 11:58:39 recall which other provisions I may have relied on, 11:58:48 but I also relied on my recollection of the 11:58:59 transaction and the negotiations surrounding the 11:58:59 transaction, the conversations with Novell as to 11:59:03 what they were conveying and the internal 11:59:06 conversations as to what we believed we were buying. 11:59:09 Q. So to make sure that I understand your 11:59:16 testimony, the provisions that you right now can 11:59:19 point to in support of your belief that UNIX 11:59:30 are recital A in section 1.1(a) of the asset 11:59:33 purchase agreement; is that correct? 11:59:39	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	BY MR. BRAKEBILL: Q. And notwithstanding the excluded assets provision from section 1.1(a), is it still your personal belief that the UNIX copyrights did transfer? 12:01:42 A. Yes. 12:01:43 Q. From Novell to Santa Cruz? 12:01:44 A. Yes. 12:01:46 Q. And why is that? 12:01:46 MR. NORMAND: Objection to form, asked and 12:01:55 answered. 12:01:58 THE WITNESS: Because it's clear 12:01:58 BY MR. BRAKEBILL: 12:01:58 Q. Let me put it this way. Aside from 12:02:02 recital A 12:02:06 A. Yes. 12:02:06 Q aside from section 1.1(a) in schedule 12:02:07 1.1(a), is there any other reason for why you 12:02:11 believe that the assets to be so purchased shall not 12:02:14 include the assets set forth in schedule 1.1(b)? 12:02:16 A. I didn't understand the question. 12:02:23 Q. Aside from recital A, aside from section 12:02:24 1.1(a), and aside from schedule 1.1(a), is there any 12:02:28

19 (Pages 70 to 73)

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	Page 74		Page 76
1	excluded UNIX copyrights from the assets to be sold? 12:02:47	1	the patents to begin with, but I remember them 12:06:25
2	MR. NORMAND: Objection to form, asked and 12:02:51	2	taking the pains that they wouldn't be transferring 12:06:27
3	answered. 12:02:55	3	patents. And some of the patents had been retained 12:06:30
4	THE WITNESS: Yes. As I said before, I 12:02:55	4	by AT&T, the original owner of the UNIX technology, 12:06:32
5	also recall the conversations and discussions with 12:02:59	5	so they weren't Novell's to transfer. 12:06:38
6	Novell as to what the intent of the transaction was, 12:03:03	6	BY MR. BRAKEBILL: 12:06:42
7	what they intended to convey, what SCO intended to 12:03:13	7	Q. Do you believe that Novell had no rights 12:06:42
8	purchase. 12:03:18	8	in UNIX patents at the time it was entered into the 12:06:44
9	BY MR. BRAKEBILL: 12:03:20	9	Novell-Santa Cruz transaction? 12:06:48
10	Q. And what did Novell convey to you 12:03:21	10	MR. NORMAND: Objection to form. 12:06:49
11	regarding what was going to be conveyed to Santa 12:03:24	11	THE WITNESS: I don't know. I know that 12:06:50
12	Cruz with regard specifically to UNIX copyrights? 12:03:28	12	some were retained by AT&T but I don't know that 12:06:52
13	MR. NORMAND: Objection to form. 12:03:32	13	some may have been transferred to Novell. I don't 12:06:55
14	THE WITNESS: I do not recall a specific 12:03:36	14	recall that. 12:06:58
15	conversation regarding copyrights, but Novell 12:03:39	15	BY MR. BRAKEBILL: 12:06:58
16	conveyed that they were clearly divesting themselves 12:03:47	16	Q. But it is your understanding that no UNIX 12:06:59
17	of the UNIX business. They had no interest in the 12:03:52	17	patents were being transferred from Novell to Santa 12:07:01
18	UNIX business in retaining any interest in the UNIX 12:03:59	18	Cruz? 12:07:06
19	business except to the extent that it related to 12:04:02	19	MR. NORMAND: Objection to form, 12:07:06
20	Netware. 12:04:02	20	mischaracterizes her testimony. 12:07:09
21	And they were very clear about what they 12:04:08	21	THE WITNESS: I'm not sure what you mean by 12:07:09
22	were not conveying, which were the patents. And 12:04:16	22	patents. No patents relating to specific areas of 12:07:11
23	they were clear about a transaction that they had 12:04:26	23	the UNIX technology. There is no, to my knowledge 12:07:16
24	entered into with X/Open regarding the trademark so 12:04:29	24	no broad patent over all of UNIX. It wouldn't be 12:07:19
25	at no point did they say, "Oh, by the way, we're not 12:04:34	25	patentable, I don't believe, but there were no 12:07:23
	Page 75		Page 77
1	giving you the copyrights." 12:04:39	1	patents relating to the UNIX assets being 12:07:27
2	Q. At any point in time did Novell, anyone 12:04:40	2	transferred, being conveyed to SCO. 12:07:32
3	from Novell, say to you, "We're going to transfer 12:04:43	3	BY MR. BRAKEBILL: 12:07:37
4	the UNIX copyrights to Santa Cruz"? 12:04:47	4	Q. If someone were to make a statement that 12:07:37
5	A. No I don't recall that. It was assumed by 12:04:52	5	Novell transferred all UNIX intellectual property to 12:07:40
6	everyone that, of course, the copyrights were 12:04:55	6	Santa Cruz, is it your understanding that that 12:07:43
7	accompanying. 12:04:59	7	statement would be incorrect? 12:07:45
8	Q. There were no express words from anyone 12:05:00	8	A. I'm sorry? 12:07:47
9	from Novell to you saying Novell is going to 12:05:03	9	Q. If someone were to make the statement that 12:07:48
10	transfer the UNIX copyrights to Santa Cruz; correct? 12:05:08	10	Novell transferred all UNIX intellectual property to 12:07:52
11	MR. NORMAND: Objection, asked and 12:05:13	11	Santa Cruz, would that be an incorrect statement? 12:07:57
12	answered. 12:05:14	12	MR. NORMAND: Objection to form, calls for 12:08:02
13	THE WITNESS: That's correct. 12:05:14	13	speculation. 12:08:13
14	BY MR. BRAKEBILL: 12:05:16	14	THE WITNESS: I don't understand the 12:08:13
15	Q. Now, you mentioned patents. If you could 12:05:17	15	question. 12:08:14
16	turn to schedule 1.1(b) of Exhibit 1 and look at 12:05:22	16	BY MR. BRAKEBILL: 12:08:16
17	Roman V on Exhibit 2. Roman V(b) says "all 12:05:47	17	Q. If someone were to say that Novell 12:08:16
18	patents." Do you see that? Is it your 12:05:51	18	transferred all intellectual property relating to 12:08:21
19	understanding that that relates to all UNIX patents? 12:05:53	19	UNIX to Santa Cruz, do you have a view as to whether 12:08:25
20	MR. NORMAND: Objection to form. 12:05:57	20	or not that statement would be correct? 12:08:29 MP_NOPMAND: Objection to form calls for 12:08:31
21	THE WITNESS: I don't remember which 12:06:00 patents there were. I remember a conversation with 12:06:02	21 22	MR. NORMAND: Objection to form, calls for 12:08:31 speculation. 12:08:51
	Ed Chatlos and I believe Burt Levine that they would 12:06:07	23	THE WITNESS: I don't think I can answer 12:08:51
23	- Tack names and Edeneve Dun Leville mai mey wome - 1/2002/7	ر کے ا	THE WITTEDS. I GOIT UIIIK I CAII AIISWEI 12.UO.JI
23	•	24	that question. I don't know which patents there may 12:08:52
23 24 25	not be transferring any patents. And there was an 12:06:11 issue because, you know SCO wasn't interested in 12:06:20	24 25	that question. I don't know which patents there may 12:08:52 have been. So if you're including that in your 12:09:02

20 (Pages 74 to 77)

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Description of intellectual property, then that would 12-09-05				
2 2 2 2 2 2 2 2 2 2		Page 78		Page 80
2 Novel, "Can your transfer the UNIX copyrights to 12:12:28	1	definition of intellectual property, then that would 12:09:05	1	representatives where Santa Cruz put the question to 12:12:25
3 1 1 1 1 2 1 2 2 3 3 2 3 3 2 3 3		* * ·		
So I don't know it that fits lints oyur 12:09:17 5 definition of conveyance of intellectual property 12:09:18 5 So I'm sorry. I can't answer that. 12:09:22 7 8 Y MR. BRAKEBILL: 12:09:28 7 8 Y MR. BRAKEBILL: 12:12:45 12:12:13:18 8 Y MR. BRAKEBILL: 12:12:13:18 12:12:13:				* * *
5 6 So I'm story Card naswer that 12:09:22 12:09:39				
6 SO m sorry Lean't answer that. 12:09:22		•		•
8 P.Y.M.R. BRAKEBILL: 12-09-28 3 4 4 4 4 4 4 4 4 4		1 1 2		
8			7	
9				The state of the s
10		The state of the s		•
1. Q. And could you turn to attachment D of 12:09:43 2 2 2 2 2 2 2 2 2				
12 Exhibit 1? It ends in the number on the right-hand 12:09:44 12 13 20 20 20 20 20 21:13:42 13 21:13:42 13 21:13:42 13 21:13:42 13 21:13:42 13 21:13:43 13 21:13:44 14 21:13:44 14 21:13:44 15 21:13:44 15 21:13:45 15 21:13:15 15 21:1			11	•
13 Corner 977. 12.09:50 14 12:10:06 14 14 14 15 14 15 14 15 15				** *
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15				•
1.0 1.1 1.0				
Affecting the Business"? 12:10:14				
18		**		* *
19		_		
20 whether these are patents or patent applications 12:10:16 21 affecting the UNIX business that was being sold to 12:10:27 22 23 MR. NORMAND: Objection to form. 12:10:27 23 MR. NORMAND: Objection to form. 12:10:36 24 MR. NORMAND: Objection to form. 12:10:36 25 MR. NORMAND: Objection to form. 12:10:36 25 MR. BRAKEBILL: 12:14:15 27 40 assumption alone, but yes, I was assuming that. 12:14:15 27 28 29 MR. BRAKEBILL: 12:10:42 20 assumption alone, but yes, I was assuming that. 12:14:15 27 28 29 MR. BRAKEBILL: 12:10:42 21 30 MR. BRAKEBILL: 12:10:42 21 30 MR. BRAKEBILL: 12:10:42 21 30 MR. BRAKEBILL: 12:10:44 21 30 MR. NORMAND: Objection to form. 12:10:49 4 MR. NORMAND: Objection to form. 12:10:49 4 MR. NORMAND: Objection to form. 12:10:49 4 MR. NORMAND: Objection to form. 12:10:49 7 MR. BRAKEBILL: 12:11:30 4 MR. NORMAND: Objection to form. 12:10:49 7 MR. BRAKEBILL: 12:11:30 4 MR. NORMAND: Objection to form. 12:10:49 7 MR. BRAKEBILL: 12:11:41 12:14:41 1				
21 affecting the UNIX business that was being sold to 12:10:19 21 Santa Cruz? 12:10:20 22 Santa Cruz? 12:10:20 23 Santa Cruz? 12:10:20 24 Santa Cruz? 12:10:20 25 Santa Cruz? 12:10:20 26 Santa Cruz 12:10:20 27 Santa Cruz 12:10:20 27 Santa Cruz 12:10:20 28 Santa Cruz 12:10:20 29 Santa Cruz 12:10:20 29 Santa Cruz 12:10:20 20 Santa Cruz 12:10:30		The state of the s		
22 Santa Cruz? 12:10:23				** *
MR. NORMAND: Objection to form. 12:10:27 23 assumption alone, but yes, I was assuming that. 12:14:11 12:14:15 25 don't have any specific recollection about the 12:10:36 25 25 MR. BRAKEBILL: 12:14:15 21:14:15 22:14:15 25 MR. BRAKEBILL: 12:14:15 22:14:15 25 MR. BRAKEBILL: 12:14:22 25 MR. BRAKEBILL: 12:14:26 25 MR. BRAKEBILL: 12:14:26 25 MR. BRAKEBILL: 12:10:42 25 MR. BRAKEBILL: 12:10:42 25 MR. BRAKEBILL: 12:10:42 26 MR. NORMAND: Objection to form 12:10:42 27 MR. NORMAND: Objection to form. 12:10:43 27 MR. NORMAND: Objection to form. 12:10:43 27 MR. NORMAND: Objection to form. 12:14:37 27 MR. BRAKEBILL: 12:14:37 MR. NORMAND: Objection to form. 12:14:37 21:14:38 MR. NORMAND: Objection to form. 12:14:37 MR. NORMAND: Objection to form. 12:14:38 MR. BRAKEBILL: 12:14:31 MR. NORMAND: Objection to form. 12:14:37 MR. NORMAND: Objection to form. 12:14:37 MR. NORMAND: Objection to form. 12:14:38 MR. NORMAND: Objection to form. 12:14:39 MR. District of the deal? 12:14:39 MR. District of the deal? 12:14:39 MR. District of the deal? 12:14:39 MR. NORMAND: Objection to form. 12:14:39 MR. NORMAND: Objection to form. 12:14:39 MR. District of the deal? 12:14:31 MR. NORMAND: Objection to form. 12:14:37 MR. NORMAND: Objection to form. 12:14:38 MR. NORMAND: Objection to form. 12:14:39 MR. District of the deal? 12:14:44 MR. NORMAND: Objection to form. 12:14:39 MR. NORMAND: Objection to form. 12:14:39 MR. NORMAND: Objection to form. 12:14:39 MR. NORMAND: Objection to form. 12:14:30 MR. NORMAND: Objection to form. 12:15:20 MR. NORMAND: Objection to form. 12:15:44 MR. NORMAND: Objection to form. 12:15:36 MR. NORMA		<u> </u>		· · · · · · · · · · · · · · · · · · ·
THE WITNESS: Yes, I believe they were. I 12:10:32 25 25 25 26 26 27 27 27 27 28 28 29 29 29 29 29 29				•
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21 (Pages 78 to 81)

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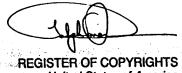
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant

٧.

INTERNATIONAL BUSINESS MACHINES CORPORATION.

Defendant/Counterclaim-Plaintiff.

DECLARATION OF JAY PETERSEN (COPYRIGHT NOTICES)

Case No. 2:03CV-0294DAK Honorable Dale A. Kimball Magistrate Judge Brooke C. Wells

I, Jay Petersen, declare as follows:

- 1. I submit this declaration in connection with The SCO Group, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003). I make this declaration based upon personal knowledge.
- 2. I have been employed at The SCO Group, Inc. and its predecessor entities since 1986 in various different engineering positions. In my capacity as a Director at SCO during the years 1998 through 2001, I was intimately involved in the operation of SCO.
- 3. Counsel for SCO has asked me to examine the source code of the UNIX product that Santa Cruz developed following Santa Cruz's acquisition of the UNIX business from Novell in 1995. Accordingly, I have examined the source code of UnixWare Version 7, which first shipped in 1998. The source code throughout the product contains this repeated reservation of rights: "Copyright (c) 1998 The Santa Cruz Operation, Inc. All Rights Reserved".

November 10, 2006

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