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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff and Counterclaim-
Defendant,

vs.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-
Plaintiff.

**NOVELL'S MOTION FOR SUMMARY
JUDGMENT ON SCO'S FIRST CLAIM
FOR SLANDER OF TITLE AND THIRD
CLAIM FOR SPECIFIC
PERFORMANCE**

Case No. 2:04CV00139

Judge Dale A. Kimball

Novell, Inc. (“Novell”) moves the Court for partial summary judgment as to The SCO Group, Inc.’s (“SCO’s”) First and Third Claims for Relief for slander of title and specific performance, respectively.

Federal Rule of Civil Procedure 56 permits the Court to grant partial summary judgment if the pleadings, discovery, and affidavits show that there is no genuine issue of material fact and that Novell is entitled to judgment as a matter of law. SCO’s First and Third Causes of Action for slander of title and specific performance are based on SCO’s assertion that Novell sold the UNIX and UnixWare copyrights to SCO’s alleged predecessor, the Santa Cruz Operation (“Santa Cruz”), as part of the Asset Purchase Agreement (“APA”).

Here, the undisputed facts show that the list of “Excluded Assets” in Schedule 1.1(b) of the APA explicitly excluded “all copyrights” from the assets to be transferred by Novell to Santa Cruz. This exclusion is reinforced by express language in the contract providing that the Assets purchased “shall not include those assets . . . set forth on Schedule 1.1(b).” SCO’s attempt to overcome this exclusion by citing extrinsic evidence that “all copyrights” means “some copyrights” is unavailing. The plain meaning of “all” is all. The parol evidence rule precludes SCO from relying on parol evidence in support of an interpretation to which the APA is not reasonably susceptible. Moreover, the admissible extrinsic evidence confirms that the exclusion of all copyrights from the transferred assets was deliberate and consistent with the APA’s objectives.

The APA as amended by Amendment No. 2 also did not transfer the UNIX and UnixWare copyrights to Santa Cruz. The Copyright Act, 35 U.S.C. § 204, requires a written instrument, signed by the copyright owner, to transfer copyrights. Amendment No. 2 does not constitute such a written instrument because it did not purport to transfer any copyrights or other

assets, nor did it retroactively amend the Bill of Sale that was executed ten months earlier. Moreover, although Amendment No. 2 revised the Schedule 1.1(b) list of Excluded Assets to create an exception for copyrights “required” for Santa Cruz to pursue its UNIX business, it did not specify which copyrights were required, and Santa Cruz did not require ownership of any UNIX copyrights because it already had a license to use the copyrights as needed to implement the APA.

Because neither the APA nor Amendment No. 2 transferred copyright ownership to Santa Cruz, Novell is entitled to summary judgment on SCO’s slander of title claim on the ground that SCO cannot establish that Novell’s statement that SCO did not own the copyrights was false. Novell is also entitled to summary judgment on SCO’s claim for an order requiring Novell to transfer the copyrights to SCO, because neither the APA nor Amendment No. 2 required Novell to transfer the copyrights.

For all of these reasons, Novell requests that summary judgment be entered that neither the APA nor Amendment No. 2 transferred ownership of the copyrights to Santa Cruz, and that SCO’s slander of title and specific performance claims fail as a matter of law.

DATED: April 20, 2007

ANDERSON & KARRENBERG

By: /s/ Heather M. Sneddon

Thomas R. Karrenberg
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-and-

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of April, 2007, I caused a true and correct copy of **NOVELL'S MOTION FOR SUMMARY JUDGMENT ON SCO'S FIRST CLAIM FOR SLANDER OF TITLE AND THIRD CLAIM FOR SPECIFIC PERFORMANCE** to be served to the following:

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