

EXHIBIT 20

THE SCO GROUP, INC. v. NOVELL, INC.

May 10, 2007

GREGORY JONES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,)
) Case No. 2:04CV00139
Plaintiff,)
)
vs.) Videotaped Deposition of:
) GREGORY JONES
NOVELL, INC.,)
)
Defendant.)

May 10, 2007

9:53 a.m.

Hatch, James & Dodge
10 West Broadway, Suite 400
Salt Lake City, UT 84111

Sharon Morgan, CSR, RPR, CRR
Notary Public in and for the State of Utah

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1 out from what I was reviewing.
 2 Q. (By Mr. Normand) Do you know if anyone else
 3 was involved?
 4 A. I think there were others. I can't remember
 5 them all by name.
 6 Q. Does the name Jim Wilt?
 7 A. No, that doesn't ring a bell, but --
 8 Q. And putting aside outside counsel for the
 9 moment, who were the principal negotiators of the deal
 10 that became set forth in the APA from the Novell side?
 11 MR. BRAKEBILL: Form.
 12 A. Well, I know that -- I know that Ed Chatlos
 13 and Ty Mattingly spent a lot of time on it. Others
 14 involved seemed to be David Bradford, Jim Tolonen, and
 15 to some extent possibly even Bob Frankenberg.
 16 Q. (By Mr. Normand) And what is your basis for
 17 your view as to who was involved in these
 18 negotiations, documents you've reviewed or the people
 19 you've spoken with, anything in particular as a source
 20 for that information?
 21 A. Documents I've reviewed. I think the
 22 declarations, for example, that we just saw. Some of
 23 the documents produced had correspondence -- you know,
 24 internal correspondence or correspondence between
 25 Santa Cruz and Novell, materials like those.

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1 MR. BRAKEBILL: Are you on Topic 1?
 2 MR. NORMAND: I am. And if you want to --
 3 MR. BRAKEBILL: This might be helpful.
 4 MR. NORMAND: Why don't we mark this as an
 5 exhibit.
 6 (Exhibit No. 1087 marked.)
 7 Q. (By Mr. Normand) We've had marked as Exhibit
 8 1087 a five-page sheet that Mr. Brakebill has handed
 9 me that is entitled SCO's 30(b)(6) Topic No. 1 and
 10 then a parenthetical (Includes Topics 8, 11 and 18.)
 11 I take it, Mr. Jones, you're familiar with
 12 this document?
 13 A. Yes.
 14 Q. And I take it that with respect to the table
 15 marked Filings, whatever the content of those filings,
 16 that content reflects Novell's views on the subject
 17 matter addressed in those filings?
 18 A. Correct.
 19 Q. And to the best of your knowledge, is there
 20 any exception to the statement that I just made? Is
 21 there any inaccurate statement in any of those
 22 filings?
 23 A. I don't know of any.
 24 MR. BRAKEBILL: Just so the record is clear,
 25 and this might come up in questioning, there might be

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1 additional filings in the future that may reflect that
 2 also.
 3 MR. NORMAND: Understood.
 4 MR. TIBBITTS: Might be?
 5 MR. BRAKEBILL: I'm pretty sure there will
 6 be. There will be.
 7 Q. (By Mr. Normand) With respect to the second
 8 table in Exhibit 1087 called Example Evidence, could
 9 you or your counsel explain to me what that table is?
 10 A. I'll defer to counsel if he wants to answer.
 11 MR. BRAKEBILL: These are documents -- these
 12 are -- Greg mentioned that he had in his preparation
 13 reviewed a number of documents, and these are
 14 documents that in the course of his preparation
 15 related to Topic No. 1.
 16 MR. NORMAND: I take it --
 17 MR. BRAKEBILL: And form -- they are evidence
 18 in forming views. It doesn't mean the documents
 19 themselves are the views, but they are evidence in
 20 forming the viewpoints. For example, you asked him a
 21 question about who was involved in certain things.
 22 These would be among documents that he had reviewed in
 23 his preparation of the course of -- you could ask him
 24 about that. These inform the views. Are there other
 25 documents? Yes, he's seen -- you can ask him -- he's

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1 seen a lot of documents in his 50 plus hours of
 2 preparation.
 3 MR. NORMAND: Okay. Thank you.
 4 MR. BRAKEBILL: It's an effort to simplify
 5 and expedite the deposition.
 6 MR. NORMAND: All those other good verbs?
 7 MR. BRAKEBILL: Yes.
 8 MR. NORMAND: Okay. Thank you.
 9 Q. (By Mr. Normand) I think Mr. Bradford
 10 describes his role in the negotiations in his
 11 declaration. Let me just ask you in Novell's view,
 12 what was Mr. Bradford's role in that negotiation of
 13 the deal or the document set forth in the APA?
 14 A. Well, I think Novell would agree with what he
 15 described in his declaration, so that would be the
 16 view. And generally my understanding from his
 17 declaration is that he was tasked with making sure
 18 that the contract was negotiated to protect Novell's
 19 interests.
 20 Q. Do you know whether he was involved in the
 21 drafting of any particular language in the APA?
 22 A. From his declaration it's -- and from other
 23 declarations, it's clear that he gave directions with
 24 respect to the drafting. Whether he actually crafted
 25 any sentences or actually did wordsmithing, I don't

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<p style="text-align: right;">Page 18</p> <p>1 trademarks in UnixWare and all patents were 2 extended -- 3 THE REPORTER: I'm sorry? 4 A. Sorry. All copyrights and trademarks except 5 for the trademarks in Unix and UnixWare were excluded 6 and all patents were excluded, Schedule 1.1(b). 7 Q. (By Mr. Normand) Is it Novell's view that 8 apart from that intellectual property that you've just 9 identified, any other intellectual property in Unix 10 and UnixWare was transferred under the APA? 11 A. Yes. I believe that's Novell's view. 12 Q. Do you have a view as to whether trade 13 secrets in Unix and UnixWare were among the 14 intellectual property assets that were transferred 15 under the APA? 16 MR. BRAKEBILL: Foundation. 17 A. If there were trade secrets -- certainly 18 trade secrets as a category was not excluded so if 19 there were any trade secrets in those technologies, 20 they would have been transferred. 21 Q. (By Mr. Normand) If you look at Section 4.7 22 of the APA on page 22 of the APA, that section says, 23 "Buyer and seller shall issue a joint press release 24 with respect to the subject matter of this agreement," 25 end quote. Do you see that language?</p>	<p style="text-align: right;">Page 20</p> <p>1 the fact that that quote appears there that someone 2 from Novell reviewed and approved this press release? 3 MR. BRAKEBILL: Form. 4 A. Well, I hope that at least Bob Frankenberg 5 reviewed it. But I've actually seen -- I've actually 6 had occasion where, you know, press releases go out 7 with a quote and it hasn't received corporate review. 8 So someone might draw that inference, but I wouldn't 9 necessarily, based on my experience. 10 Q. (By Mr. Normand) But would Mr. Frankenberg's 11 review and approval not have constituted Novell's 12 review and approval of the press release? 13 MR. BRAKEBILL: Scope, form, speculation. 14 A. I don't know what he would have seen. I 15 just -- I don't know whether he saw this entire press 16 release. I just don't know what he would have seen. 17 Q. (By Mr. Normand) Is it Novell's position 18 that if Mr. Frankenberg had reviewed and approved this 19 press release marked as Exhibit 1028 that that review 20 and approval would not have constituted Novell's 21 review and approval of the press release? 22 MR. BRAKEBILL: Scope, speculation. 23 A. I would be speculating. 24 Q. (By Mr. Normand) Does it matter to Novell's 25 view as to whether this was the press release referred</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Yes. 2 Q. Do you know whether such a press release was 3 issued? 4 A. I don't believe that one was. 5 Q. I'm handing you what has been marked 6 previously as Exhibit 1028, which is a document 7 entitled Press Release under the SCO symbol in the top 8 right of the document. Do you recognize this 9 document? 10 A. Yes, I've seen this before. 11 Q. So is it Novell's view that this press 12 release is not a joint press release as referred to in 13 Section 4.7 of the APA? 14 A. Yes. 15 Q. And did anyone from Novell have occasion to 16 review and approve this press release before it was 17 issued? 18 A. I don't know. 19 Q. Do you see on page 2 of the press release 20 there's a quote from Robert J. Frankenberg, chairman 21 and CEO of Novell? Do you see that language? 22 A. Which paragraph is that? 23 Q. Top paragraph. 24 A. Top paragraph? Okay. 25 Q. Do you think it's reasonable to infer from</p>	<p style="text-align: right;">Page 21</p> <p>1 to in Section 4.7 of the APA? Does it matter to that 2 view whether Mr. Frankenberg did review and approve 3 this press review? 4 A. No. 5 Q. And why not? 6 A. Well, a joint press release -- we do joint 7 press releases and they will have the appearance of 8 coming from both companies, the logos from both 9 companies, et cetera. This is simply not a joint 10 press release, it's a SCO press release. 11 Q. If you look on page 2, second paragraph, it 12 begins, quote, "According to the terms of the 13 agreement, SCO will acquire Novell's UnixWare business 14 and Unix intellectual property." Do you see that 15 language? 16 A. Yes. 17 Q. In Novell's view, is that statement accurate? 18 A. I don't think it's -- I don't think -- it's 19 not accurate. It's really inconsistent with what we 20 just read out of the Asset Purchase Agreement. It's 21 also somewhat vaguely worded. 22 Q. In what respects in your view is it not 23 correct? 24 A. Well, one reading in 7 says that SCO will 25 acquire Novell's UnixWare and Unix intellectual</p>

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1 property. And so if you take intellectual property as
 2 being the whole -- every form of intellectual
 3 property, you know, we just read in the Asset Purchase
 4 Agreement that three forms of intellectual property
 5 were carved out and were not transferred. So that
 6 would be the inconsistency and the inaccuracy.
 7 Q. Is the portion of the statement saying that
 8 SCO will acquire Novell's UnixWare business accurate?
 9 A. I think generally.
 10 Q. Do you know if Novell ever issued its own
 11 press release regarding the APA?
 12 A. Yeah, I believe Novell did.
 13 Q. Do you know whether that document has been
 14 produced in this litigation?
 15 A. I don't know whether it has been produced.
 16 Q. Do you recall if you had occasion to review
 17 any Novell press release in connection with your
 18 preparation for your deposition today?
 19 A. You know, yes, I have reviewed the press
 20 releases, yes.
 21 Q. And do you recall what, if anything, the
 22 Novell press release or press releases said about the
 23 issue of Unix or UnixWare intellectual property?
 24 A. I know they didn't say this. I reviewed a
 25 lot of documents, obviously, but the press releases

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1 just generally describe the transaction, and it was a
 2 way that, with respect to intellectual property, was
 3 consistent with what I understand the Asset Purchase
 4 Agreement to provide. But I reviewed a lot of
 5 documents so...
 6 Q. Do you know whether those Novell press
 7 releases are publicly available?
 8 A. They should be. They're -- they have always
 9 been publicly available in the past. I know that,
 10 back to, say, like through '95 or so, they are on the
 11 Web site. So I -- you know, so this just gets into
 12 what the Web masters have done and all of that, but,
 13 generally speaking, all of our press releases are
 14 there. There is a certain time after '94 and '95 when
 15 the older ones aren't there anymore, and I just don't
 16 know the exact cutoff date.
 17 Q. So to the extent they are available, they
 18 would be available through Novell's current Web site;
 19 is that right?
 20 A. That's one source.
 21 Q. Do you know of any other sources?
 22 A. No, just -- they were press releases at one
 23 point and there may be some -- whoever keeps old press
 24 releases might have them, but I --
 25 Q. Pressrelease.com?

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1 A. I just don't -- I don't know.
 2 Q. Okay. Do you recall in your review of those
 3 press releases reading anything with respect to the
 4 APA that is inconsistent with Novell's views regarding
 5 the APA now?
 6 A. I can't recall anything inconsistent.
 7 Q. And I may have asked you this, but do you
 8 recall anything, generally or specifically, on the
 9 issue of intellectual property being addressed by
 10 Novell in those press releases?
 11 A. I can't remember whether it actually speaks
 12 in terms of intellectual property. I just know that
 13 there wasn't anything on that topic that contradicted
 14 my understanding of the transaction.
 15 Q. If you look at the last page of the press
 16 release that I've handed you, second to the last
 17 paragraph, it says, "The business of Novell, Inc. is
 18 connecting people with other people and the
 19 information they need, enabling them to act on it any
 20 time, any where. Novell is the world's leading
 21 network software provider. The company's software
 22 products provide the distributed infrastruced,
 23 network services, advanced network access and network
 24 applications required to make networked information
 25 and computing an integral part of everyone's daily

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1 life." Do you see that?
 2 A. Yes.
 3 Q. Isn't such language regarding Novell
 4 consistent with the form of a joint press release
 5 between Novell and Santa Cruz?
 6 A. It's probably --
 7 MR. BRAKEBILL: Objection to form,
 8 argumentative, speculation.
 9 A. There's probably an element of what a joint
 10 press release would include, but I think that's all it
 11 is.
 12 Q. (By Mr. Normand) Do you know whether in any
 13 of the press releases you reviewed Novell undertook to
 14 correct any aspect of this press release marked as
 15 Exhibit 1028?
 16 MR. BRAKEBILL: Foundation.
 17 A. I don't know one way or another on that.
 18 Q. (By Mr. Normand) Does Novell have a view as
 19 to whether following the execution of the APA the
 20 market's belief was that Santa Cruz had acquired the
 21 Unix and UnixWare intellectual property from Novell?
 22 MR. BRAKEBILL: Form, speculation.
 23 A. I don't know of a Novell view to that effect.
 24 Q. (By Mr. Normand) I'll direct your attention
 25 to the Included Assets Schedule of the APA.

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1 the excluded forms of intellectual property, yes.
 2 Q. Again, I may be beyond what you know, but if
 3 Santa Cruz were to go bankrupt, why wouldn't the
 4 rights to the revenue stream follow the trade secrets
 5 and the software know-how and the methods and concepts
 6 as opposed to the copyrights?
 7 A. Yeah, and, here again, I just go back to that
 8 the measure of the copyright ownership was understood
 9 to be what the bankruptcy law called for, and that's
 10 the extent of my understanding.
 11 Q. So if I were to ask why didn't Novell seek to
 12 retain the trade secrets and know-how and methods and
 13 concepts in Unix and UnixWare, would it be fair to say
 14 that your understanding is Novell didn't need to do
 15 that under the bankruptcy law in order to retain its
 16 equitable interest in the revenue stream?
 17 MR. BRAKEBILL: Speculation.
 18 A. On that I would be speculating as to why that
 19 wasn't excluded as well.
 20 Q. (By Mr. Normand) Did the Wilson Sonsini firm
 21 advise Novell in 1995 that owning the copyrights in
 22 Unix source code would permit Novell to continue to
 23 have rights to a revenue stream from the Unix and
 24 UnixWare source code if Santa Cruz were to go
 25 bankrupt?

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1 MR. BRAKEBILL: Foundation.
 2 A. That's my -- after everything that I have
 3 reviewed, that is -- that's my understanding. And --
 4 yeah.
 5 Q. (By Mr. Normand) What -- do you know what
 6 advice the Wilson Sonsini firm gave Novell in 1995
 7 regarding the prospect of retaining some of the
 8 intellectual property in Unix and UnixWare?
 9 MR. BRAKEBILL: Repeat that one more time.
 10 Q. (By Mr. Normand) Do you know what advice
 11 Wilson Sonsini gave Novell in 1995 regarding the
 12 prospect of retaining some of the intellectual
 13 property in Unix and UnixWare?
 14 A. Yeah --
 15 MR. BRAKEBILL: Foundation.
 16 A. I'm not clear by prospect. Do you mean the
 17 possibility or -- that would simply be --
 18 Q. (By Mr. Normand) I take it at some point,
 19 just to help out your answer, at some point Novell and
 20 Wilson Sonsini contemplated whether to retain some
 21 intellectual property in Unix and UnixWare with
 22 respect to the APA. Is that fair to say?
 23 A. Yeah, at some point in David Bradford's
 24 declaration he talks about, you know, directing in --
 25 and Tor Braham talks about being directed in that

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1 area, so --
 2 Q. Do you know what advice anyone from Wilson
 3 Sonsini gave anyone from Novell on whether and why to
 4 retain some of the intellectual property in Unix and
 5 UnixWare?
 6 MR. BRAKEBILL: Why don't you ask the
 7 foundation question first.
 8 Q. (By Mr. Normand) Do you know whether Wilson
 9 Sonsini gave anyone from Novell any advice on whether
 10 to retain the Unix and UnixWare -- some of the Unix
 11 and UnixWare intellectual property?
 12 A. I know that -- my understanding is that David
 13 Bradford initiated that and then what advice -- what's
 14 given as to whether that could be done, I'm not aware
 15 of that type of a conversation taking place between
 16 Wilson Sonsini and Novell, if I'm understanding your
 17 question correctly.
 18 Q. What I need to ask is whether you know if
 19 anyone from Wilson Sonsini gave anyone from Novell
 20 advice on what rights under the law Novell could
 21 secure for itself by retaining some of the
 22 intellectual property rights in Unix and UnixWare.
 23 A. The only -- the only extent to which I know
 24 that occurred goes back to the conversation we've just
 25 been having about the bankruptcy code and the benefits

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1 of retaining copyrights for that particular reason.
 2 Beyond that I don't know what discussions did or
 3 didn't happen.
 4 MR. NORMAND: Why don't we take a break.
 5 THE VIDEOGRAPHER: Going off the record. The
 6 time is 10:50. This is the end of tape No. 1.
 7 (Recess.)
 8 THE VIDEOGRAPHER: We're going back on the
 9 record. The time is 11:05. This is the beginning of
 10 tape No. 2.
 11 Q. (By Mr. Normand) Mr. Jones, I asked you
 12 earlier about discussions and you drew a distinction
 13 between discussions and communications. I think in
 14 your mind discussions was verbal discussions, and I
 15 asked you that question regarding copyrights. Do you
 16 remember that generally?
 17 A. You know, my memory has already faded. I
 18 do -- I just know on one of the topics I was trying to
 19 understand what you were talking about speech as
 20 opposed to written.
 21 Q. I just mean that by way of introduction. Do
 22 you know whether there were express discussions as
 23 opposed to communications in the form of proposed
 24 assets schedules or excluded asset schedules? Do you
 25 know if there were express discussions between the

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<p style="text-align: right;">Page 46</p> <p>1 there he did indicate that the copyrights were being 2 excluded from -- they were being retained, and 3 certainly Bob Frankenberg was a member of the board 4 and those board minutes indicate what other executives 5 were present in the meeting. So we would have to look 6 to that document to see who else was in that meeting, 7 but I know that that's -- I don't know that other 8 communications weren't made, but that's the only 9 specific one I'm aware of. 10 Q. (By Mr. Normand) So I take it you don't know 11 if there were memos or other notes or e-mails 12 communicating from any member of the Novell legal 13 department and Novell executive that the Unix and 14 UnixWare copyrights were being retained? 15 A. I mean, I know -- I know of executives who 16 had knowledge of it. How they came to have the 17 knowledge, I'm not -- after having reviewed all these 18 documents, I'm not sure which ones tell how they came 19 to have the knowledge and who would have spoken to 20 them, so... 21 Q. When you say you know of executives who have 22 knowledge of it, who were the executives you have in 23 mind? 24 A. Well, again, Mike DeFazio and Jim Tolonen, 25 and then -- you know, and then Bob Frankenberg was at</p>	<p style="text-align: right;">Page 48</p> <p>1 Purchase Agreement certainly contemplated that. I'll 2 assume that SCO was going to be engaged in those type 3 of activities. 4 Q. The operating agreement is a later document 5 the parties executed pertaining to the APA? 6 A. Right. 7 Q. So as you sit here, can you tell me where 8 Santa Cruz's right to make copies of the Unix and 9 UnixWare source code is set forth in the APA? 10 A. It's basically set forth in the combination 11 of the list of assets being transferred with the 12 carveout of the IP coupled with the obligations that 13 SCO was going to be undertaking. Those things taken 14 together basically are what authorize SCO to be 15 engaged in copying and so forth. 16 Q. When you say obligations, maybe I just don't 17 understand. An obligation owed to whom? 18 A. I believe to the other party of the 19 agreement, to Novell. I believe in the operating 20 agreement that SCO had obligations to Novell to 21 perform certain development and other activities. 22 Q. Of the Unix and UnixWare business? 23 A. Well, of the -- I think of the merged 24 product. The operating agreement, I'm not sure to 25 what -- I think it related to the merged -- so-called</p>
<p style="text-align: right;">Page 47</p> <p>1 that board meeting and the board memo said that David 2 Bradford indicated the copyrights were being retained. 3 Q. Do you know whether the board minutes specify 4 whether the, quote, copyrights were being retained or 5 whether the, quote, Unix copyrights were being 6 retained? 7 A. Yeah, the exact language, I don't know. I 8 know it mentions copyrights in the context of this 9 transaction are being retained by Novell. 10 Q. In the APA, did Novell intend to give Santa 11 Cruz the right to make copies of the Unix and UnixWare 12 source code? 13 A. I think the APA does that. 14 Q. Do you have any particular language in mind? 15 A. Well, the obligations that SCO has under the 16 APA would basically assume that they are going to be 17 making copies and so forth. 18 Q. What are SCO's obligations that you're 19 referring to in your answer? 20 A. It's -- you know, it was contemplated that 21 SCO was going to be carrying forward the business, 22 right, and developing future versions of products, and 23 I'm trying to recall the aspects of the APA that deal 24 with that. And certainly the activities contemplated 25 by the operating agreement and I think the Asset</p>	<p style="text-align: right;">Page 49</p> <p>1 merged product. 2 Q. Do you have an understanding of what the 3 merged product is or was to be? 4 A. Well, you know, so Novell had -- that's my 5 general understanding, and the operating agreement 6 would be the source for it, you know, because SCO had 7 a -- I don't know what it was called -- whatever 8 variant of Unix they had and Novell had UnixWare and 9 it was going to be a follow on. But the operating 10 agreement would really be the -- I just pointed to 11 that and that would say exactly what it is. 12 Q. Do you know whether under the APA SCO had the 13 right to develop the UnixWare business independent of 14 a merged product? 15 A. Well, developed -- developed the business? 16 Is that what you mean? 17 Q. Do you know whether the parties contemplated 18 that Santa Cruz could develop and sell a version of 19 UnixWare that was different than whatever the merged 20 product became? 21 A. I guess in this area, notwithstanding my 22 preparation being a little bit weak, I think, in terms 23 of understanding all the different products that may 24 have been contemplated. 25 MR. BRAKEBILL: I would refer you to the</p>

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1 Q. That's the section titled License Back of
 2 Assets?
 3 A. Right.
 4 Q. And it's your view that Section 1.6 gives
 5 Novell the right to develop Unix and UnixWare source
 6 code?
 7 A. Well, yeah, it gives -- that is a section
 8 that provides for certain -- it would allow
 9 development type activities.
 10 Q. Is it Novell's view that after the execution
 11 of the APA, Novell had the right to continue to
 12 develop and distribute the UnixWare source code?
 13 A. Well, to the -- yes, to the extent allowed by
 14 the terms of the APA.
 15 Q. And what is your view on the extent to which
 16 the APA did allow Novell to do that?
 17 A. Well, it's -- if you look at Section 1.6, it
 18 describes the extent to which Novell could do that if
 19 you assume -- you know, there's some facts here that I
 20 just don't have to completely answer your question.
 21 For example, if you assume that Unix has trade secrets
 22 and so forth, then some bounds on Novell's activities
 23 are going to be by the constraints of 1.6 because
 24 Novell is going to need a license under those
 25 intellectual properties that are owned by Santa Cruz.

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1 So 1.6 in the TLA that was executed to implement 1.6,
 2 that would -- those documents would speak for
 3 themselves and would describe the scope of Novell's
 4 rights. I really couldn't -- you know, the further
 5 explanation of that would have to take into account
 6 the language of those documents and factual
 7 information about the technologies themselves, so I
 8 don't know if I can go much further than that.
 9 Q. At the time the parties began to negotiate
 10 the APA, Novell was involved in the business of
 11 developing and selling operating systems, among other
 12 businesses, correct?
 13 A. Correct.
 14 Q. And among the operating systems that Novell
 15 was in the business of selling was UnixWare and
 16 NetWare, correct?
 17 A. That's correct.
 18 Q. And among the operating systems that Novell
 19 was in the business of developing and selling was Unix
 20 operating systems; is that correct?
 21 A. Yes.
 22 Q. After the execution of the APA, Novell
 23 remained involved in the business of developing and
 24 selling the NetWare operating system, correct?
 25 A. Yes.

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1 Q. And I take it Novell's view is Novell had the
 2 right after the execution of the APA to remain in the
 3 business of developing and selling the NetWare
 4 operating system?
 5 A. Yes.
 6 Q. Is it Novell's view that after the execution
 7 of the APA, it had the right to remain in the business
 8 of developing and marketing the UnixWare operating
 9 system?
 10 A. I guess I can only answer that as to the
 11 extent allowed by the terms of the Asset Purchase
 12 Agreement and the Technology License Agreement, to the
 13 extent -- to that extent.
 14 Q. Do you know whether Novell remained in the
 15 business after the execution of the APA of developing
 16 and selling the UnixWare operating system?
 17 A. I wouldn't describe it -- I wouldn't describe
 18 Novell as having continued in that business.
 19 Q. And why not?
 20 A. I guess just based on all the documents that
 21 I've read and press releases characterizing the
 22 transaction and so forth that the entire intent was
 23 for the UnixWare business to be transitioned to SCO.
 24 Q. Do you know -- this is probably out of scope,
 25 but do you know whether -- do you have a view as to

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1 whether the NetWare and UnixWare operating system
 2 businesses were in competition?
 3 MR. BRAKEBILL: Scope.
 4 A. Yeah, I am probably not going to answer that
 5 one.
 6 Q. (By Mr. Normand) And that's because you
 7 don't know the answer?
 8 A. Yeah, I don't -- I would just be giving you a
 9 guess.
 10 Q. Section 1.6 of the APA that you referred to
 11 says, so we can get it into the record in the
 12 beginning, "Concurrent with closing, buyer shall
 13 execute a license agreement under which it shall grant
 14 to seller a royalty-fee, perpetual, worldwide license
 15 to (i) all of the technology included in the assets,
 16 and (ii) all derivatives of the technology included in
 17 the assets, including the "Eiger" product release
 18 (such licensed back technology to be referred to
 19 collectively as 'Licensed Technology'). Seller agrees
 20 that it shall use the Licensed Technology only (i) for
 21 internal purposes without restriction or (ii) for
 22 resale in bundled or integrated products sold by
 23 seller which are not directly competitive with the
 24 core products of buyer and in which the Licensed
 25 Technology does not constitute a primary portion of

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<p style="text-align: right;">Page 66</p> <p>1 Q. (By Mr. Normand) So does Novell take the 2 position that an SVRX license is any contract relating 3 to any implementation listed in item VI? 4 A. I'd just have to refer you to the filings, 5 because I'm sure the filings are going to give you the 6 information that you're seeking. 7 Q. And the filings are your source of knowledge? 8 A. Yes. 9 Q. Apart from what's set forth in the filings, 10 it's not a question you could answer? Because I can't 11 cross-examine the filings. 12 A. Yeah, I guess I would say your best answer is 13 going to be in the filings. I'll put it that way. 14 Q. Do you know if there's any distinction in the 15 licensing of SVRX or Unix or UnixWare, if there's any 16 distinction between the software agreement on the one 17 hand and the supplement or the schedule to the 18 software agreement on the other hand? 19 A. Yeah, I'm generally familiar with the two 20 different types of documents. 21 Q. Do you know what is the extent of your 22 knowledge with respect to what a software agreement 23 is? 24 A. Very limited. I regard the software 25 agreement to things like -- kind of like the umbrella</p>	<p style="text-align: right;">Page 68</p> <p>1 4.16 affords Novell rights to direct such things and 2 I'm sure the filings speak more broadly to it. 3 Q. Do you have a view as to whether under 4 Section 4.16 Novell was obligated to exercise its 5 rights in good faith? 6 A. I think the right under 4.16 was an absolute 7 right. 8 Q. So the answer to my question is -- 9 A. I don't know of any -- I don't know of any -- 10 any such condition being placed on the exercise of 11 that right. 12 Q. Is it Novell's position that it had full 13 rights of control over the Unix and UnixWare licenses 14 that it had just transferred to Santa Cruz? 15 MR. BRAKEBILL: Objection, vague and 16 ambiguous. 17 A. Yeah, I think this is addressed in the 18 filings again, and there is -- your question is a 19 little vague, but I take it to mean, for example, 20 Section 4.16(c) which somehow constrained Novell in 21 actions it might take. 22 Q. How would Section 4.16(c) constrain Novell? 23 A. The filings would completely explain that. 24 Q. What did you have in mind when you said it? 25 A. Well, 4.16(c), you know, says that seller --</p>
<p style="text-align: right;">Page 67</p> <p>1 agreement the customer would sign. A supplement is 2 something more specific. That's about it. 3 Q. Do you have a view as to whether a software 4 agreement refers to any particular product? 5 A. I don't know whether any of those software 6 agreements identify specific products or not. 7 Q. Do you have a view as to whether any software 8 agreement is an SVRX license? 9 A. How those two terms match up with each other? 10 Q. Uh-huh (affirmative). 11 A. I'm sure that's going to be in the filings. 12 If you're just -- I'll just refer you there. 13 Q. Would your answer be the same if I were to 14 ask you about a sublicensing agreement? 15 A. Yes. 16 Q. Do you have a view as to whether the software 17 agreement is the agreement that sets forth the 18 licensee's rights to use and distribute the licensed 19 source code? 20 A. No. I can refer you to the filings on all of 21 this. 22 Q. In the APA, did Novell intend to have the 23 right to direct Santa Cruz to increase any SVRX 24 licensing source code rights that Novell chose? 25 A. I guess I would just say that the Section</p>	<p style="text-align: right;">Page 69</p> <p>1 yes, "Seller further covenants that immediately 2 following the closing date neither it, nor any of its 3 officers, directors or employees shall (i) take any 4 material action designed to promote the sale of SVRX 5 products or (ii) provide material compensation to any 6 employee designed and intended to incentivize such 7 employee to promote the sell of SVRX products, except 8 for actions incidental to unrelated business 9 activities of seller." 10 So Novell would have to take that into 11 account as it would exercise its rights under 4.16(b). 12 That's what I had in mind. 13 Q. Can you give me an example of how Section 14 4.16(c) might constraint Novell's rights under Section 15 4.16(b)? 16 MR. BRAKEBILL: Form, scope. 17 A. Well, so if Novell took directed action in 18 4.16(b). 19 THE REPORTER: I'm sorry, if Novell what? 20 A. Took action -- well, I can't remember. But 21 if Novell directed SCO to take action under 4.16(b), 22 it would basically result in promoting the sale of 23 SVRX products, and then SCO provides compensation to a 24 Novell employee incentivizing that employee to have 25 directed SCO to do that. I mean, that's -- I guess</p>

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<p style="text-align: right;">Page 130</p> <p>1 Novell to transfer those particular copyrights? 2 MR. BRAKEBILL: Form. 3 A. I think, yeah -- so I think she tracks the 4 language more closely of Section A there in Amendment 5 2, but she does seem to suggest something like that in 6 her declaration. 7 Q. (By Mr. Normand) And is it Novell's position 8 that this paragraph A of Amendment No. 2 sets up the 9 process that Santa Cruz would have to follow in order 10 to obtain any Unix or UnixWare copyrights? 11 A. I guess I wouldn't characterize it as 12 anything beyond what Allison had written and what it 13 provides here. 14 Q. She sort of, in my view, leaves it hanging as 15 to how exactly paragraph A of Amendment No. 2 is 16 supposed to operate, but if you're telling me you have 17 no understanding other than what she says, then -- 18 A. Really, yeah, beyond what she says, yeah. 19 Q. Do you have Ms. Amadia's declaration in front 20 of you among that pile? 21 A. I believe I do. 22 Q. Looking at paragraph 15 of the declaration on 23 page 4, Ms. Amadia says, quote, "Should, after 24 Amendment No. 2, Santa Cruz believe its license to use 25 Novell's copyrighted works was insufficient and that</p>	<p style="text-align: right;">Page 132</p> <p>1 that I don't know that I've given it consideration. 2 Q. Well, does Novell have a view as to how 3 Amendment No. 2, paragraph A, would have worked if the 4 parties had disagreed on whether a copyright was 5 necessary or not? 6 A. I don't -- I don't have anything specific to 7 say beyond just, you know, at times people disagree on 8 the application of some contract terms to a fact 9 situation. I don't -- you know, there are various 10 ways that those things can be resolved and I haven't 11 thought through that in this context. 12 Q. There's no language in Amendment No. 2 that 13 addresses that issue, right? 14 MR. BRAKEBILL: Form. 15 A. There's no express language that talks about, 16 you know, in the event the parties disagree about 17 whether it's required. There's nothing expressed 18 along those lines. 19 Q. (By Mr. Normand) Now, Ms. Amadia refers to, 20 in the language I read into the record, refers to 21 Santa Cruz's, quote, "license to use Novell's 22 copyrighted works," end quote. Do you see that 23 language? 24 A. Yes. 25 Q. I take it that phrase is consistent with</p>
<p style="text-align: right;">Page 131</p> <p>1 it needed ownership of any particular Unix or UnixWare 2 copyright rights because ownership of such copyrights 3 was "required" to run its business, I believe Santa 4 Cruz would have to have made such a request to 5 Novell." 6 Do you see that language? 7 A. Yes. 8 Q. Does Ms. Amadia's belief reflect Novell's 9 views in this litigation as to Amendment No. 2? 10 A. I believe that it does. 11 Q. And do you -- 12 MR. BRAKEBILL: You mean referring to that 13 specific belief? 14 MR. NORMAND: Yeah, I don't mean to say this 15 is everything she has said on Amendment No. 2. 16 Q. (By Mr. Normand) In Novell's view, would 17 Novell have had any obligations of good faith in 18 responding to any such request from Santa Cruz? 19 A. I don't know. That's just something I 20 haven't -- I haven't considered. 21 Q. Have you considered what would have happened 22 if Novell disagreed with Santa Cruz's view that it 23 needed a particular copyright? 24 A. Well, I just considered to the point where if 25 it's not required, then it's not required, but beyond</p>	<p style="text-align: right;">Page 133</p> <p>1 Novell's view that under the APA Santa Cruz obtained a 2 license to use Novell's copyrighted works? 3 A. Yes. 4 Q. To the extent that Santa Cruz did not obtain 5 under the APA a license to use Novell's copyrighted 6 works, would the copyrights in Unix and UnixWare have 7 been necessary for Santa Cruz to have to exercise its 8 rights with respect to its acquisition of Unix and 9 UnixWare? 10 MR. BRAKEBILL: Form, scope. Do you have a 11 personal view on that? 12 A. My personal view is I can't imagine a gap, 13 because the -- if there were copyrights relating to 14 the -- to the assets and the Asset Purchase Agreement, 15 then those would have been licensed. And so I -- I 16 can't envision a gap between where the activities of 17 Santa Cruz would be broader than the license afforded. 18 The activities for which they should expect to be able 19 to engage with respect to Novell copyrighted works, 20 that there be a gap there, I can't envision that. 21 Q. (By Mr. Normand) What if Santa Cruz in 22 negotiating the APA did not believe that it had a 23 license to use Novell's copyrighted works, would it 24 follow that Santa Cruz believed that it needed all of 25 the copyrights in Unix and UnixWare in order to</p>

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<p style="text-align: right;">Page 134</p> <p>1 exercise its rights with respect to the acquisition of 2 those businesses? 3 MR. BRAKEBILL: Form, scope. If you have a 4 personal view, you can answer. 5 A. If the question is, you know, if they 6 believed X, would they also believe Y? If they 7 believed they didn't have a license, would they 8 believe they required, you know, ownership, then that 9 seems logical. I don't know if they would actually 10 think that way. Of course, the test, as I read 11 Amendment 2 is whether the copyrights are actually 12 required. 13 Q. (By Mr. Normand) If you didn't have a 14 license to use Novell's copyrighted works, what other 15 source of rights would Santa Cruz have to make copies 16 of Unix and UnixWare and to distribute copies of Unix 17 and UnixWare? 18 MR. BRAKEBILL: Form, scope. Do you have a 19 personal view? 20 A. Well, yeah, I think it's a hypothetical 21 that's just kind of divorced from the business 22 circumstance that I've seen so I haven't considered 23 it. 24 Q. (By Mr. Normand) We are now surrounding 25 these questions with -- first of all, it's not a</p>	<p style="text-align: right;">Page 136</p> <p>1 believes that SCO did not have a license and they 2 wanted to make sure -- well, I suppose they have 3 various defenses available to them. I believe since 4 they have been using the technologies for years, they 5 could rely on estoppel and Lachey's theory, for 6 example. 7 So, I mean, just if -- you want me to really 8 add quite an extreme hypothetical so I guess it kind 9 of yields extreme answers, which is, you know, they 10 have been in this business for years and Novell hasn't 11 tried to stop them. So if Novell, the copyright -- if 12 you say we need to be able to do these activities and 13 not have the copyright owner stop us from doing it, as 14 I understand the situation to be, you would say, well, 15 we've been -- we've actually been doing these things 16 for years. Novell has never tried to stop us from 17 doing it. If they ever tried to assert their patents 18 against us, even if there is no license in the terms 19 of the Asset Purchase Agreement, we would have 20 numerous defenses, detrimental reliance, estoppel and 21 so forth. So, I mean, that's -- like I said, it's an 22 extreme hypothetical. Maybe it seems a rather extreme 23 response, but I think the hypothetical yields that 24 type of analysis. 25 Q. (By Mr. Normand) Amendment No. 2 was signed</p>
<p style="text-align: right;">Page 135</p> <p>1 hypothetical. Second of all, it's on topic, so I'm 2 not asking for your personal view. I'm asking for 3 Novell's views of whether the copyrights would be 4 necessary if, in fact, Santa Cruz did not have a 5 license to use the copyrighted works. 6 A. Well -- 7 MR. BRAKEBILL: Novell's view, as he stated, 8 was that there was a license. 9 MR. NORMAND: That's bucking the hypo. 10 A. Can you reload the hypo so I can -- 11 Q. (By Mr. Normand) Mr. Sabbath, I'll represent 12 to you, has testified in this case that his 13 understanding of the APA was that it was not a license 14 of any Novell copyrighted works to Santa Cruz. So 15 taking this hypothetical, if you want to call it that, 16 that in Santa Cruz's view it did not have a license to 17 use Novell copyrighted works, my question is apart 18 from such a license, what other source of rights would 19 Santa Cruz have to make copies of and distribute 20 copies of Unix and UnixWare but for the copyrights in 21 Unix and UnixWare? 22 MR. BRAKEBILL: Same objections, 23 mischaracterizes Mr. Sabbath's testimony in that it's 24 incomplete. 25 A. Well, so just -- so if he believes -- if he</p>	<p style="text-align: right;">Page 137</p> <p>1 on October 16th, 1996, correct? Look on the front 2 page. 3 A. Yes. 4 Q. As of October 16th, 1996, in Novell's view 5 was there any other source of right for Santa Cruz to 6 make copies of and distribute copies of Unix and 7 UnixWare other than what Novell regards as Santa 8 Cruz's license to Novell's copyrighted works? 9 A. I guess I would just say yes in the sense 10 that if Novell attempted to assert its copyrights 11 against Santa Cruz for engaging in Unix and UnixWare 12 business, Novell would have failed given the nature of 13 this transaction. So whether Santa Cruz -- 14 Q. Santa Cruz failed because, in your view, 15 there was a license back to Santa Cruz? 16 A. Well, however you characterize it. So if 17 someone doesn't want to characterize it -- if they say 18 I didn't have a license, so whatever the terminology 19 is or whatever the legal structure is, Novell is not 20 going to be able to stop them from moving forward 21 without Unix and UnixWare business. 22 So it seems like it puts potentially a form 23 over substance question in terms of is there a 24 license. And any practical view of this, Santa Cruz 25 is going to be able to move forward with its business</p>

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<p style="text-align: right;">Page 142</p> <p>1 entitled to something by contract and they are 2 deprived of it, you know, the contract doesn't 3 necessarily say when you guys disagree this is exactly 4 how we're going to resolve it, but there are means 5 available for resolving it. 6 Q. But in this sense, paragraph A doesn't add 7 anything more to what Santa Cruz could have done by 8 just going back to Novell and saying we think the APA 9 needs to be amended and we know you may disagree? 10 A. I've answered your question on this one, I 11 think. 12 Q. So how is it again that paragraph A creates a 13 different scenario after the execution of Amendment 14 No. 2 than a scenario in which Santa Cruz would just 15 go to Novell and ask them to amend? How are Novell's 16 obligations in the one instance different from its 17 obligations in the other instance? 18 MR. BRAKEBILL: Asked and answered. 19 A. I'll answer once more. So let's say there's 20 copyright X, and I am -- who am I? I'm SCO. 21 Q. (By Mr. Normand) I can ask it a different 22 way. 23 A. No, no, I mean, I'm trying to answer. 24 Q. I'm not trying to be redundant. 25 A. No, no, that's fine. So let's say that</p>	<p style="text-align: right;">Page 144</p> <p>1 this agreement, the parties agree to take and will 2 take all such lawful and necessary and/or desirable 3 action," end quote. Do you see that language? 4 A. Yes. 5 Q. I don't know if you've thought about this 6 language, but wouldn't this encompass a situation 7 where you would say to Novell, it is necessary for us 8 to amend this APA for us to get this copyright, and if 9 Novell says no, we disagree, can't you then have an 10 argument that Novell isn't complying with Section 11 1.7(c)? 12 A. Well, it's an argument. I would rather have 13 Amendment 2, Section A, which deals specifically with 14 that subject as opposed to having some general 15 provision of this nature. 16 Q. Look at Section 4.12, paragraph -- sorry, 17 page 23 of the APA. 18 A. Which page? 19 Q. 23. It says, quote, "Each party hereto, at 20 the request of another party hereto, shall execute and 21 deliver such other instruments and do and perform such 22 other acts and things as may be necessary or desirable 23 for effecting completely the consummation of this 24 Agreement and the transactions contemplated hereby," 25 end quote. Do you see that language?</p>
<p style="text-align: right;">Page 143</p> <p>1 there's copyright X. I'm SCO. I think that I -- I 2 think that I require this to be able to engage in the 3 Unix and UnixWare business. It's required or I can't 4 do it. The ownership is required for whatever reason. 5 And I go to Novell and I say, you know, I 6 require this, and Novell says we're not transferring 7 it to you. If I'm able to -- you know, so at that 8 point whether we -- whether we engage in arbitration, 9 which it's not called out, whether it's a lawsuit, 10 whatever, I have -- without Novell having to agree, if 11 I can objectively demonstrate as a matter of law that 12 this is required for my business, I'm going to get it. 13 So that's with the change. 14 Without the change, I go to Novell and I say, 15 I require copyright X. Novell, transfer it to me. 16 Novell says, no, we don't want to. Full stop. 17 There's nowhere for me to go. 18 Q. But the APA has several provisions that gives 19 you a place to go in that kind of situation. We can 20 go over those. Do you have the APA in front of you? 21 A. Uh-huh (affirmative). Maybe I can find the 22 language I'm thinking of. 23 Q. Look at Section 1.1(c). It says, quote, "If 24 at any time after the closing date any further action 25 is necessary or desirable to carry out the purposes of</p>	<p style="text-align: right;">Page 145</p> <p>1 A. Yes. 2 Q. Could you make the same arguments with 3 respect to that section? 4 MR. BRAKEBILL: Form, vague and ambiguous. 5 A. I think it's a weaker argument than the 6 earlier section you cited. 7 Q. (By Mr. Normand) I should have stopped with 8 that sentence? 9 A. And I still prefer Amendment 2, Section A, to 10 those. 11 Q. So just to use a phrase that we used earlier 12 with respect to 4.16(b), is it Novell's view that it 13 had the right in its sole discretion to decline the 14 transfer of any copyrights that Santa Cruz may have 15 come back and identified with respect to paragraph A 16 of Amendment No. 2? 17 MR. BRAKEBILL: Form. 18 A. The only standard that I see in Section A is 19 a standard of required. I don't -- I don't see -- you 20 know, the language 4.16(b) has the language of 21 seller's sole discretion and direction, and I don't 22 see that type of language in Amendment 2, Section A. 23 Q. (By Mr. Normand) Let me ask you a slightly 24 different question. What if Santa Cruz succeeded in 25 this case in convincing either the court or the jury</p>

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<p style="text-align: right;">Page 198</p> <p>1 Fujitsu example that you can think of where there were 2 communications between Novell and a third party 3 involving issues of copyrights? 4 A. Not really. I mean, if you -- you know, 5 anything in connection with Amendment 2 I suppose you 6 could put in that category, but we've talked about 7 that so much. So I've -- no. 8 Q. And does the reference to written 9 communications in this Exhibit 1095 encompass written 10 communications internal to Novell in which the issue 11 of copyrights came up? 12 A. It should be comprehensive, whether it's 13 internal or with third parties. 14 Q. Okay. And can you recall any specific 15 internal communication at Novell regarding the issue 16 of copyrights apart from what's identified elsewhere 17 in Exhibit 1095? 18 A. Well, yeah -- no -- let me see. Well, you 19 know, so, for example, we've talked earlier today 20 about the board meeting where David Bradford spoke 21 about retaining copyrights, so there's an actual memo 22 that gets sent out. So that's a communication on that 23 topic. And I'm just -- there may be others, and right 24 now I'm just not -- I'm not remembering well. 25 Q. Do you know whether the issue of copyrights</p>	<p style="text-align: right;">Page 200</p> <p>1 1095, just so the record is clear? 2 MR. NORMAND: Yes. 3 A. Yeah, I -- I don't think so. I would have 4 had occasion to consult on the TLA terms and so forth, 5 so in that sense it kind of relates to all of that, 6 but I don't have a specific recollection of having 7 consulted on the copyright issues. So I just -- I 8 don't remember anything like that. 9 Q. (By Mr. Normand) Just so I have an 10 understanding as to -- if I could take that -- Exhibit 11 1087, when you say you don't think the Fujitsu 12 communication that you recall or seem to recall was 13 listed here -- I understand this is a list of 14 examples -- do you know why it would not be listed 15 here, that selection process? 16 A. I didn't prepare the example evidence. 17 Q. Okay. Do you know whether from 1996 to 2002 18 any third party undertook to assess Novell's assets at 19 any point? 20 MR. BRAKEBILL: Scope. Do you have a 21 personal understanding? 22 A. To -- could you say that again? 23 Q. (By Mr. Normand) Undertake to assess 24 Novell's assets. I'm wondering if there's any 25 communications involving Novell and any such third</p>
<p style="text-align: right;">Page 199</p> <p>1 ever came up internal to Novell during the course of 2 the negotiations of what became Amendment No. X? 3 A. Well, I guess -- my understanding is that 4 Amendment X and Amendment No. 2 were being done 5 contemporaneously, so to the extent Steve Sabbath 6 raised the issue of copyright ownership, you could say 7 it's kind of in that context because they are 8 happening at the same time. 9 Q. Apart from that, are you aware of any other 10 internal communications at Novell regarding the 11 copyrights in 1996? 12 MR. BRAKEBILL: Other than what's listed 13 here, you mean? 14 MR. NORMAND: Yes. 15 A. No. 16 Q. (By Mr. Normand) Do you know of any 17 communications between Novell and any of its outside 18 counsel regarding the issue of copyrights apart from 19 Amendment No. 2 between 1996 and 2002? 20 A. I'm not aware of any written communication 21 with outside counsel about the issue of copyrights. 22 Q. Or any discussions, if you're aware of any 23 with outside counsel regarding the issue of 24 copyrights. 25 MR. BRAKEBILL: Again, we're setting aside</p>	<p style="text-align: right;">Page 201</p> <p>1 party in which the issue of copyrights arose. In 2 other words, any third party undertaking an inquiry 3 into Novell's assets or assessing Novell's assets. 4 A. I'm not aware of any such exercise with a 5 third party that would go to that level. 6 Q. Do you know of any internal communications at 7 Novell regarding the ownership of copyrights in Unix 8 or UnixWare in 2002? 9 MR. BRAKEBILL: Let me just say one thing for 10 clarity. To the extent that there began at some point 11 late in 2002, as the record reflects, communications 12 back and forth between SCO and Novell, that topic is 13 going to be deferred until next week. 14 MR. NORMAND: In 2002? 15 MR. BRAKEBILL: Yes, in the late 2002 time 16 frame when the SCO -- just for ease of questioning, 17 rather than having two witnesses speak on the same 18 topic, Mr. LaSala will be speaking to the time period 19 late in 2002 when communications began from SCO to 20 Novell concerning Unix, if you know what I'm saying. 21 MR. NORMAND: I do. 22 Q. (By Mr. Normand) So prior to the time -- 23 MR. BRAKEBILL: Prior to the fall of 2002. 24 Q. (By Mr. Normand) Prior to the fall of 2002 25 when I think you ended up in conversations with</p>

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<p style="text-align: right;">Page 238</p> <p>1 Q. (By Mr. Normand) And in your view, the 2 retention of Unix and UnixWare intellectual property 3 was another such measure? 4 A. Yes. 5 Q. I don't mean to bounce you around like this, 6 but the Tor Braham declaration, Exhibit 1084, where he 7 said in paragraph 14, "During the negotiations" -- I 8 read this before, but "David Bradford indicated to me 9 that Novell was unwilling to transfer intellectual 10 property rights in Unix and UnixWare, including 11 patents and copyrights," end quote. Do you see that 12 language? 13 A. Yes. 14 Q. Do you know how it was that Novell came to be 15 willing to transfer some intellectual property rights 16 in Unix and UnixWare? 17 A. You asked me a similar question earlier, and 18 I don't know. 19 Q. I probably did. 20 A. Yeah, I don't know. 21 Q. In Ms. Amadia's declaration, Exhibit 1086, 22 she says in paragraph 14, and I quote, "Amendment 23 No. 2 was not intended to alter the original APA's 24 copyright ownership exclusion," end quote. Do you see 25 that language?</p>	<p style="text-align: right;">Page 240</p> <p>1 position that Amendment No. 2 did not revise the 2 Excluded Asset Schedule of the APA; is that right? 3 A. Oh, yeah, I mean -- yes, there's no doubt 4 that the literal language of the Amendment 2 basically 5 says that the text of that schedule is going to -- is 6 altered, "shall be" -- "shall be revised to read." 7 Q. Do you know whether -- let me ask it this 8 way. Does Novell regard its retention of the Unix and 9 UnixWare copyrights under the APA as analogous to a 10 deal it did with Tuxedo in or around that time? 11 MR. BRAKEBILL: Scope. If you have a 12 personal understanding, you can testify. 13 A. I guess -- I guess it is an element that the 14 two transactions have in common. I guess I would say 15 it that way. 16 Q. (By Mr. Normand) The element being the 17 copyrights were not transferred, in your view? 18 A. Right. 19 Q. Do you know whether the deal with Tuxedo was 20 described in the documents as a license? 21 MR. BRAKEBILL: Same objection as earlier. 22 A. In the -- the documents meaning the 23 transaction documents? 24 Q. (By Mr. Normand) Yes. 25 A. That one -- yes, there is a -- it is</p>
<p style="text-align: right;">Page 239</p> <p>1 A. Yes. 2 Q. Does that statement reflect Novell's views? 3 A. Yes, it does. 4 Q. How can that statement be reconciled with the 5 opening language of paragraph A of Amendment No. 2? 6 MR. BRAKEBILL: Foundation. 7 A. The developing paragraph being the language 8 "with respect to"? 9 Q. (By Mr. Normand) Yes. 10 A. Yeah, I guess I don't see the conflict. As I 11 read her declaration she says this confirms there was 12 a license that does provide, you know, the standard 13 where if SCO demonstrates that copyrights are 14 required, that the required copyrights can be 15 transferred. Let me see Section 14. 16 You know, so I suppose the way I would -- if 17 you had to reconcile them, I would reconcile them by 18 saying that when this was executed, the status quo 19 that she describes of there being a license situation 20 remained in place and that there was no -- there were 21 no required copyrights that anybody was aware of or 22 that were subsequently identified. So that's how -- 23 if I had to reconcile them, I would say that, although 24 I don't know if they need to be. 25 Q. (By Mr. Normand) But it's not Novell's</p>	<p style="text-align: right;">Page 241</p> <p>1 described as a license. 2 Q. Mr. Tolonen in his declaration -- I'm sorry, 3 I'm testing your ability to move in and out of these 4 exhibits -- says in paragraph 16 of his declaration 5 that "Amendment No. 2 confirmed that Santa Cruz would 6 be allowed to continue to use the Novell-retained 7 copyrights - as it had been doing for the 13 prior 8 months - only as required to exercise its rights under 9 the Asset Purchase Agreement. However, Novell would 10 continue to own those copyrights." 11 This may be a semantic issue, but is there a 12 distinction between -- well, is it Novell's view that 13 SCO had retained the right to use the copyrights or 14 that Novell had a license to use Novell's copyrighted 15 works? 16 A. Could you state that again? 17 Q. Is it Novell's view that under the APA Santa 18 Cruz had obtained the right to use the Unix and 19 UnixWare copyrights, on the one hand, or that Santa 20 Cruz had obtained the license to use the Unix and 21 UnixWare copyrighted works? What I'm getting at is I 22 don't really understand the phrasing that Mr. Tolonen 23 has used here. Maybe -- 24 A. Yeah, the fact that he talks about -- which 25 aspect of his phrasing?</p>

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EXHIBIT 21

CONF'L SUBJECT TO PROTECTIVE ORDER

1 Personally, as I mentioned earlier, I always
2 had some reservations. I mean, we pretty much knew
3 we were treading on thin water here -- thin ice here.
4 So --

5 BY MR. JACOBS:

6 Q. Does this memo refresh your recollection at
7 all about paid-up license discussions with HP around
8 this time frame?

9 A. It did, yes. There was a project, a
10 three-way project between HP, SCO, and Novell, and it
11 required HP to do some work we didn't have engineers
12 for, and we were working out a compensation for them.
13 And the compensation was waiver of a year's worth of
14 royalties. And then it was an annual basis thing,
15 and it was intended to be a three-way discussion.
16 And it was just simply helping pay for the work that
17 HP was doing. It was not a modification to their
18 license.

19 Q. Did you ever hear that one of the purposes
20 behind Section 4.16(b) of the Asset Purchase
21 Agreement was to ensure that Novell's interests in
22 furthering the project with Hewlett-Packard were
23 protected?

24 A. Oh, no. I never heard that.

25 Q. Then in the second paragraph, allegation

EXHIBIT 22

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Attorneys for The SCO Group, Inc.

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
 MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF CHRISTOPHER
 S. SONTAG**

Case No. 2:03CV0294DAK
 Honorable Dale A. Kimball
 Magistrate Judge Brooke C. Wells

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), and The SCO Group v. Novell, Inc., Civil Action No. 2:04CV00139 DAK (D. Utah 2004). I make this declaration based upon personal knowledge.

2. I am Senior Vice President of the SCO Group, Ltd. I have been with the SCO Group since October 11, 2002.

3. In late 2002 and early 2003, SCO began researching the intellectual property surrounding Linux. We learned that customers were using its proprietary UNIX libraries with Linux, but without the license necessary to use UNIX for this purpose. We began exploring licensing programs designed to protect our UNIX and Unixware assets from further dilution.

4. SCO presented its library licensing plan to multiple partners, including Oracle, Intel, Computer Associates, and Hewlett Packard, and was met with a favorable or ambivalent response. IBM, however, was opposed to the plan, and discouraged SCO from proceeding with the program. IBM was the only company to express such disapproval when the plan was first presented.

5. In December of 2002, I was a participant on a phone call between SCO executives and counsel and several IBM executives and attorneys. The IBM representative tried to persuade SCO not to issue the anticipated press release announcing the library licensing program or to begin its program.

6. I was also a participant in the phone call between Mr. McBride and Novell executive Greg Jones in November 2002. Mr. McBride expressed SCO's understanding that the intent of the Asset Purchase Agreement (APA) was that the copyrights to Unix

and Unixware had been transferred to SCO. Mr. Jones agreed with Mr. McBride. Mr. McBride then asked whether Mr. Jones was aware of any paperwork which reflected their understanding of the Asset Purchase Agreement. Mr. Jones said he would check.

7. Sometime thereafter, Mr. Jones called and explained that the documents relating to the APA were in storage and would be difficult to access. Instead, Mr. Jones proposed that someone at Novell simply sign a statement or letter confirming their mutual understanding that SCO had acquired the UNIX copyrights, rather than trying to find the old documents in storage.

8. I spoke with Mr. Jones in February of 2003 and asked him to sign a letter consistent with our previous conversations, clarifying and stating that it was our mutual understanding of the APA agreement that the copyrights had in fact been transferred pursuant to the APA Agreement. Following that phone call, I emailed to Mr. Jones a letter, which was prepared for his signature, clarifying that all right, title and interest in and to the SVRX copyrights had been transferred to SCO in the Asset Purchase Agreement. A redacted copy of that email and the letter I sent are attached hereto as exhibits 1 and 2, respectively.

9. At the time I discussed this clarification from Novell, I was not aware of Amendment No. 2 of the APA, which unequivocally states that the copyrights were among the assets transferred to SCO in the APA. If I had been familiar with Amendment No. 2, I would not have thought it necessary to seek any clarification from Novell.

10. I understand that Mr. Greg Jones has submitted a declaration in support of IBM's motion for summary judgment, in which he states that SCO repeatedly contacted Novell requesting that Novell transfer the UNIX copyrights to SCO. I strongly disagree

with Mr. Jones. I did not, at any time, ask him or Novell to transfer those rights to SCO or to amend the Asset Purchase Agreement (APA).

11. At no time in these conversations did Mr. Jones state or imply that SCO did not own the Unix and Unixware copyrights, and in fact consistently agreed that the copyrights had transferred to SCO.

12. In early 2003, Mr. Jones contacted us and said that Novell would not issue the clarification we had discussed. Mr. Jones said that it was not that Novell did not agree with SCO's position, but that they did not want to be involved or to take any position. Mr. Jones further said that Novell was "not interested in Unix anymore."

13. From July 21, 2003 to August 31, 2004, I supervised Gregory Blepp, and ultimately terminated his employment.

14. I understand that Mr. Blepp is quoted as saying "you don't put everything on the table at the start, but instead you bring out arguments and evidence piece by piece" (IBM Ex. 375).

15. If Mr. Blepp in fact said this, it is not accurate. His statement is not consistent with anything Mr. Blepp was instructed by me or by SCO, and does not reflect SCO's position or strategy at this time or any time.

16. Furthermore, Mr. Blepp is from Munich, and was a SCO sales person in Germany. Mr. Blepp was not familiar with the American legal system.

I declare under penalty of perjury that the foregoing is true and correct.

November 4, 2006



Christopher Sontag

EXHIBIT 1

REDACTED

-----Original Message-----

From: Chris Sontag [mailto:csontag@sco.com]

Sent: Thursday, February 20, 2003 10:36 AM

To: Greg Jones (gsjones@novell.com)

Subject:

Greg,

Attached is a first cut at a side letter to clarify the issues that we discussed yesterday. I will give you a call later, or feel free to call me on my cell at 801-918-8549.

Regards,

Chris Sontag

2/16/2006

SCOR10729

EXHIBIT 2

[SCO letterhead]

February 10, 2003

NOVELL, Inc.

Re: Asset Purchase Agreement by and Between
the Santa Cruz Operation, Inc. and Novell, Inc.
dated as of September 19, 1995

Dear: _____

This letter clarifies the intent of the parties with respect to the above-captioned transaction.

It is our understanding that the Asset Purchase Agreement by and Between the Santa Cruz Operation, Inc. and Novell, Inc. dated as of September 19, 1995 (the "Asset Purchase Agreement") transferred all of the rights and obligations under the various AT&T SVRX Software Agreements and Sublicensing Agreements (the "AT&T SVRX Agreements") from Novell to SCO, excepting only the ongoing right to receive royalty payment streams according to the terms specified in the Asset Purchase Agreement.

We wish to clarify the following:

1. That all right, title and interest in and to copyrights associated with the AT&T SVRX Agreements held by Novell at the time of the Asset Purchase Agreement were intended to be part of the Included Assets identified in Schedule 1.1 (a);
2. That no right title or interest in and to copyrights associated with the AT&T SVRX Agreements otherwise held by Novell at the time of the Asset Purchase Agreement were intended to be part of Excluded Assets identified in Schedule 1.1 (b); and
3. That no right title or interest whatsoever in and to the trademark "UNIX" was intended to be part of the Included Assets identified in Schedule 1.1 (a).

Please confirm your concurrence with the above by countersigning this side letter of understanding in the space provided below.

Sincerely yours,

Agreed and accepted:

The SCO Group

Novell, Inc.

Christopher S. Sontag
Senior Vice President
Operating Systems Division

Name: _____
Title: _____
Date: _____

EXHIBIT 23

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,)
)
 Plaintiff/) 2:04CV00139
 Counterclaim-Defendant,)
)
 vs.)
)
 NOVELL, INC.,)
)
 Defendant/)
 Counterclaim-Plaintiff.)
 -----*

Friday, March 23, 2007
Elizabeth, New Jersey
10:01 a.m.

Videotaped Deposition of BURT LEVINE,
taken by Defendant/Counterclaim-Plaintiff, pursuant
to Notice, held at the Sheraton Four Points Hotel,
901 Spring Street, Elizabeth, New Jersey, on Friday,
March 23, 2007 at 10:01 a.m. before Josephine H.
Fassett, a Certified Shorthand Reporter and Notary
Public of the State of New York.

SHARI MOSS & ASSOCIATES
Certified Shorthand Reporters
877 Cowan Road, Suite A
Burlingame, California 94010
(415) 402-0004

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1 A Yes.
2 Q Do you have any understanding that
3 Novell -- well, scratch that.
4 Do you have any understanding as to
5 who within Novell in the Legal Department was
6 working on this contract?
7 A I recall that I worked on it and I
8 don't -- there were attorneys in Utah who also had
9 input to this as far as I remember.
10 Q Do you recall the name David
11 Bradford?
12 A Yes.
13 Q Do you know who David Bradford is?
14 A He was the head of the legal
15 department in -- of Novell in Utah I think at that
16 time.
17 Q Mr. Bradford was the general counsel
18 of Novell at the time of this agreement; is that
19 right?
20 MR. NORMAND: Object to the form.
21 A I don't remember if that's true or
22 not, I believe it was.
23 Q Do you recall who, if anyone else in
24 the Novell Legal Department had any role in the
25 September 1995 contract?

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1 A I don't remember which of his
2 attorneys would have worked on this, if that's
3 your question.
4 Q Do you have any understanding as to
5 whether Novell hired outside lawyers to help in
6 the negotiation and drafting of this contract?
7 A I believe we did, yeah.
8 Q And do you have an understanding
9 that Novell hired the law firm of Wilson Sonsini
10 Goodrich & Rosati to help negotiate and draft this
11 contract?
12 A I believe that's correct.
13 Q You had worked with Wilson Sonsini
14 before in your transactional experience at
15 USL-Novell; isn't that right?
16 A I don't know that I did, maybe the
17 Tannenbaum did.
18 Q Did you work in any way on the
19 USL-Novell transaction?
20 A I don't recall.
21 Q In any event, you do recall that
22 Novell had hired Wilson Sonsini to negotiate and
23 draft this contract?
24 A Yes.
25 Q Do you know the name Tor Braham?

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1 A I've heard the name, yes.
2 Q Do you know who Tor Braham is?
3 A I've never met him, no. I've heard
4 the name, that's about it.
5 Q Do you understand that he is a
6 lawyer from Wilson Sonsini that Novell had hired
7 to work on this contract?
8 A I've heard it, I don't know that on
9 my own.
10 Q Do you know the name Aaron Alter?
11 A Excuse me?
12 Q Do you know the name Aaron Alter?
13 A No.
14 Q As you sit here today, do you recall
15 what involvement, if any, you had in drafting or
16 contributing any portion of this particular
17 agreement dated September 19th, 1995?
18 A I know that I worked on drafting
19 some of the provisions, I don't know which ones in
20 particular.
21 Q And how is it that you recall that
22 you were involved in drafting some provisions?
23 A I was asked to do it by the
24 negotiators for Novell.
25 Q And as you sit here today are you

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1 sure that any drafting that you did relating to
2 the Novell-Santa Cruz deal was in connection with
3 this particular September 19, 1995 contract as
4 opposed to an amendment to this contract?
5 A No, I can't recall specifically, you
6 know, what work I did on one versus the other.
7 Q Now do you -- you have read this
8 September 19, '95 Agreement I take it at some
9 point in time?
10 A Eleven, twelve years ago.
11 Q That was a long time ago?
12 A Yeah.
13 Q Do you remember any particular
14 provisions in this contract as you sit here today?
15 A No.
16 Q Memories can fade over time?
17 A Yes.
18 Q And as an experienced lawyer would
19 you agree with me that if you wanted to go back
20 after the fact and find out what the parties'
21 rights and obligations were under this contract
22 you could go read the contract?
23 MR. NORMAND: Objection to form.
24 A Well, that would be one source,
25 yeah.

15 (Pages 54 to 57)

1 that right?
 2 A Eight Roman numerals, yes.
 3 Q Right. And those are assets of
 4 substance; isn't that right?
 5 MR. NORMAND: Objection to form.
 6 A Intellectual property, yes,
 7 definitely.
 8 Q Okay. And if you look at Roman V it
 9 is entitled Intellectual Property, correct?
 10 A Right.
 11 Q And it lists two types of excluded
 12 intellectual property, one, all copyrights and
 13 trademarks except for the trademarks UNIX and
 14 UnixWare, and two, all patents; do you see that?
 15 A I see that.
 16 Q Okay. What is listed is (a) and (b)
 17 of Roman V are specifically excluded assets under
 18 this contract, would you agree with me?
 19 A Specifically listed assets, yes.
 20 Q Specifically listed as excluded --
 21 A Right.
 22 Q -- assets, correct?
 23 MR. NORMAND: Objection to form.
 24 BY MR. BRAKEBILL:
 25 Q In reading this do you understand

1 that Novell is excluding all patents from this
 2 asset transfer?
 3 A I understand what the agreement
 4 says, I understand what the exclusions are in the
 5 document.
 6 Q Okay. And based on reading this
 7 exclusion in the contract do you understand that
 8 all copyrights and trademarks except for the
 9 trademarks UNIX and UnixWare are excluded from
 10 this asset transfer?
 11 A No, I don't.
 12 MR. NORMAND: Objection to form.
 13 Objection to the extent it calls for a
 14 legal conclusion.
 15 BY MR. BRAKEBILL:
 16 Q You disagree with the language in
 17 this schedule; is that right?
 18 MR. NORMAND: Objection to form.
 19 A No, I don't disagree that these are
 20 listed here, I disagree that in the context of
 21 this agreement that this is, that this is the
 22 whole story.
 23 Q Do you disagree that the contract on
 24 September 19th, 1995 specifically excluded all
 25 copyrights and trademarks except for the

1 trademarks UNIX and UnixWare?
 2 MR. NORMAND: Objection to form.
 3 Objection to the extent it calls for a
 4 legal conclusion.
 5 A I cannot answer that Yes or No.
 6 Q Why can't you answer that Yes or No?
 7 A Because there's a premise that
 8 hasn't been stated here, we're talking about a
 9 written document and we're talking about the
 10 party's intent.
 11 Q Is this document, Schedule 1.1(b),
 12 unclear to you?
 13 A Yes.
 14 Q How is it unclear to you?
 15 A The asset that purports to be
 16 transferred from Novell to SCO in the intent of
 17 the parties will ex -- will include, to my reading
 18 or to my knowledge, even though I don't remember
 19 the specific terms of this agreement, the
 20 intention was to convey all of these ownership and
 21 auxillary ownership rights to the asset including
 22 copyright. And the fact that there is this kind
 23 of an exclusion there tells me that there is an
 24 ambiguity in this agreement or a mutual mistake
 25 which wipes out any kind of an integration clause.

1 I don't agree that that's what the agreement
 2 means.
 3 Q Can you tell me in your view what is
 4 ambiguous about the exclusion on Schedule 1.1(b)
 5 of, quote, all copyrights and trademarks except
 6 for the trademarks UNIX and UnixWare?
 7 MR. NORMAND: Objection to form.
 8 Mischaracterizes his testimony.
 9 A Can you repeat that question,
 10 please?
 11 Q Can you tell me in your view what is
 12 ambiguous about the exclusion on Schedule 1.1(b)
 13 of, quote, all copyrights and trademarks except
 14 for the trademarks UNIX and UnixWare?
 15 A I don't think you can exclude a
 16 copyright in this kind of an asset transfer. I
 17 think you can exclude a copyright if you're
 18 transferring the physical manifestation of the
 19 asset, but when you purport to transfer the whole
 20 asset and all the business and everything else I
 21 think inherent in that is going to be the
 22 copyright and it's a contradiction in terms for
 23 the copyright to be excluded like this.
 24 Q So I take it if you had seen this in
 25 the course of the negotiations you would have

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1 MR. BRAKEBILL: Objection to form.
2 Foundation. Calls for speculation.

3 A Well, in my mind this is, this is
4 confirmatory of my view that the, the copyrights
5 that are now specified in this amendment would
6 have been transferred in any event because of the
7 scope of the rights in the transfer of the assets,
8 and this is confirmatory of that. This leaves no
9 doubt on black and white that, that this is what
10 was intended.

11 Q I'd like to ask you, Mr. Levine,
12 about Exhibit 202 which should be in your pile
13 somewhere.

14 Exhibit 202 has the fax cover sheet
15 indicating that it's from Burt Levine, yourself,
16 to Aaron Alter.

17 A Okay.

18 Q Dated September 18th, 1995. And --

19 A Yes.

20 Q -- attached to the fax cover sheet
21 is I believe your markup of Schedule 1.1(a) and
22 the Seller Disclosure Statement, do you see that?

23 A Yes.

24 Q Do you remember reviewing the
25 document earlier?

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1 A Yes.

2 Q At any time when you were reviewing
3 this document in 1995 was it your view that Novell
4 was intending to retain the UNIX or UnixWare
5 copyrights under the APA?

6 MR. BRAKEBILL: Form.

7 A Not in the least, no.

8 THE REPORTER: I'm sorry, I didn't
9 hear your answer.

10 THE WITNESS: "Not in the least,
11 no."

12 BY MR. NORMAND:

13 Q At any time when you were reviewing
14 the schedule attached as part of Exhibit 202, was
15 it your view that the language of the APA served
16 to retain for Novell the UNIX or UnixWare
17 copyrights?

18 MR. BRAKEBILL: Form.

19 A Do you mean the APA in its original
20 form?

21 Q In the form that you were reviewing
22 it in the markup reflected in Exhibit 202.

23 You want the question read back?

24 A Please.

25 Q At any time when you were reviewing

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1 the schedule attached as part of Exhibit 202, was
2 it your view that the language of the APA served
3 to retain for Novell the UNIX or UnixWare
4 copyrights?

5 MR. BRAKEBILL: Form.

6 A No. No.

7 Q I'm going to show you, Mr. Levine,
8 or have you turn your attention to Exhibit 203.

9 A (Complies.)

10 Q Exhibit 203 is the document with a
11 telecopy cover sheet under Wilson Sonsini
12 letterhead to you from Shannon Whisenant dated
13 September 18th, 1995, and attached to the cover
14 sheet is a version of Schedule 1.1(a) of the APA,
15 and it's stamped Draft on each page.

16 A Okay.

17 Q And the same is true for Schedule
18 1.1(b). Do you remember reviewing this document
19 this morning?

20 A Yes.

21 Q Was it ever your view in reviewing
22 the document attached as part of Exhibit 203 that
23 Novell intended to retain the UNIX or UnixWare
24 copyrights under the APA?

25 A No.

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1 MR. BRAKEBILL: Form.

2 BY MR. NORMAND:

3 Q Was it ever your view when reviewing
4 the language of the document attached as Exhibit
5 203 that the language of the APA served to retain
6 for Novell the UNIX or UnixWare copyrights?

7 MR. BRAKEBILL: Form.

8 A No.

9 Q I direct your attention, Mr. Levine,
10 to Exhibit 204.

11 A (Complies.)

12 Q Exhibit 204 is the document with the
13 cover sheet under Novell's letterhead dated
14 September 15th, 1995 from you to Shannon
15 Whisenant, and attached to the document, among
16 other things, is your markup of the Seller
17 Disclosure Schedule and towards the back half of
18 the document your handwriting appears?

19 A Yes.

20 Q Do you remember reviewing this
21 document this morning?

22 A Yes.

23 Q Or this afternoon?

24 A Yes.

25 Q Was it your view at any time in

42 (Pages 162 to 165)

EXHIBIT 24

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION
C.A. No. 2:04CV00139

THE SCO GROUP, INC., a Delaware
corporation

Plaintiff and
Counterclaim Defendant

V.

NOVELL, INC., a Delaware corporation
Defendant and
Counterclaim Plaintiff

- - - - -

30(b)(6) Notice to Novell, Inc.
Deposition of Joseph A. LaSala, Jr.

Wednesday, May 16, 2007

9:41 a.m.

Ropes & Gray

One International Place

Boston, Massachusetts

- - - - -

Reporter: Deborah Roth, RPR/CSR

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<p>22:15:09 1 subject of this press release, otherwise I</p> <p>22:15:11 2 will just ask him if what he said at</p> <p>22:15:12 3 deposition reflects the company's views?</p> <p>22:15:21 4 Obviously you I don't need to commit --</p> <p>22:15:23 5 MR. BRAKEBILL: Yes, I don't</p> <p>22:15:24 6 believe so, but I can't be a hundred percent</p> <p>22:15:26 7 positive without looking at it.</p> <p>22:15:28 8 The only thing I would caution is I</p> <p>22:15:30 9 think there was a lot of testimony about it,</p> <p>22:15:32 10 meaning a number of pages. So a blanket</p> <p>22:15:36 11 question, I would be make an objection. I</p> <p>22:15:38 12 think it would be overbroad without having the</p> <p>22:15:40 13 deposition testimony so that he can look at it</p> <p>22:15:43 14 and can adopt everything. So I would caution</p> <p>22:15:43 15 that --</p> <p>22:15:46 16 BY MR. NORMAND:</p> <p>22:15:46 17 Q. Let me ask you a couple of questions</p> <p>22:15:49 18 that I think will be redundant of what I asked</p> <p>22:15:51 19 you before, and I am not trying to set up an</p> <p>22:15:53 20 inconsistencies but --</p> <p>22:15:54 21 A. I appreciate -- I appreciate that.</p> <p>22:15:55 22 MR. BRAKEBILL: And don't mean you</p> <p>22:15:57 23 have to walk through everything again either.</p> <p>22:15:58 24 Q. So to try to use the language you used</p>	<p>22:17:10 1 A. Is it our view today?</p> <p>22:17:17 2 Q. Yes, sir.</p> <p>22:17:18 3 A. I would say no. It's not our view</p> <p>22:17:22 4 today. It was our view on that day.</p> <p>22:17:30 5 Q. Did Novell receive any feedback from</p> <p>22:17:33 6 third parties such as the press or analysts as</p> <p>22:17:38 7 to what these statements in this press release</p> <p>22:17:44 8 meant with respect to the issue of copyright</p> <p>22:17:47 9 ownership?</p> <p>22:17:48 10 A. I can't recall that we did.</p> <p>22:17:55 11 Q. As you look at this press release</p> <p>22:17:59 12 today, in Novell's view, does it clearly</p> <p>22:18:09 13 convey Novell's position that Amendment No. 2</p> <p>22:18:12 14 did not affect the transfer of the UNIX</p> <p>22:18:15 15 copyrights?</p> <p>22:18:20 16 MR. BRAKEBILL: Form.</p> <p>22:18:21 17 A. No. We could have been clearer, but</p> <p>22:18:26 18 under the circumstances that we were operating</p> <p>22:18:29 19 at the time, which relate to matters that we</p> <p>22:18:36 20 talked about in my deposition in February,</p> <p>22:18:38 21 pretty much the business exigencies that</p> <p>22:18:42 22 existed at the time, when we felt that we</p> <p>22:18:44 23 needed to get a statement out in fairly short</p> <p>22:18:47 24 order, the morning of June the 6th, because</p>
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<p>22:16:00 1 in an earlier answer, you make the statement</p> <p>22:16:02 2 in this press release that, "The amendment</p> <p>22:16:05 3 appears to support SCO's claim that ownership</p> <p>22:16:08 4 of certain copyrights for UNIX did transfer to</p> <p>22:16:12 5 SCO in 1996."</p> <p>22:16:15 6 Do you see that sentence?</p> <p>22:16:16 7 A. I do.</p> <p>22:16:17 8 Q. In your view, does that sentence or any</p> <p>22:16:20 9 other language in this press release reflect</p> <p>22:16:23 10 Novell's view that the UNIX copyrights were</p> <p>22:16:26 11 not transferred by virtue of Amendment No. 2?</p> <p>22:16:32 12 A. Yes.</p> <p>22:16:35 13 Q. And how so?</p> <p>22:16:36 14 A. Well, nowhere in the press release do</p> <p>22:16:41 15 we in any way suggest that it is our view that</p> <p>22:16:46 16 Amendment No. 2 did transfer the copyrights to</p> <p>22:16:51 17 SCO in 1996.</p> <p>22:16:53 18 So by its absence, there is nothing</p> <p>22:16:56 19 here that suggests that it was our view that</p> <p>22:16:58 20 they did transfer.</p> <p>22:16:59 21 Q. Is it Novell's view today that</p> <p>22:17:03 22 Amendment No. 2 appears to support SCO's claim</p> <p>22:17:05 23 that ownership of certain copyrights for UNIX</p> <p>22:17:08 24 did transfer to SCO in 1996?</p>	<p>22:18:50 1 Mr. McBride had advised us that he was holding</p> <p>22:18:53 2 a press conference at eleven o'clock that</p> <p>22:18:55 3 morning, and we had just received the executed</p> <p>22:18:57 4 copy of Amendment No. 2, I think it was the</p> <p>22:19:01 5 preceding evening. Under the circumstances,</p> <p>22:19:04 6 this was the statement that we put out, for</p> <p>22:19:07 7 all of the reasons that we have talked about</p> <p>22:19:08 8 before.</p> <p>22:19:12 9 My recollection is that when we put</p> <p>22:19:14 10 this statement out, we hadn't yet had the</p> <p>22:19:17 11 opportunity to consult with counsel about the</p> <p>22:19:20 12 meaning of Amendment No. 2; and, so, as I</p> <p>22:19:25 13 said, under the circumstances, we included the</p> <p>22:19:28 14 word "appears" intentionally as a qualifier in</p> <p>22:19:32 15 this sentence; and as you know, we took it</p> <p>22:19:36 16 upon ourselves to provide clarity to our</p> <p>22:19:40 17 position in subsequent letters with SCO.</p> <p>22:19:46 18 Q. Let me mark or hand you Amendment</p> <p>22:19:50 19 No. 2, so we can be working off that the same</p> <p>22:19:53 20 language.</p> <p>22:20:01 21 I am handing you, Mr. LaSala,</p> <p>22:20:03 22 Amendment No. 2, which has been marked as</p> <p>22:20:05 23 Exhibit 1009, and taking what I understand to</p> <p>22:20:13 24 be your testimony, as of June 6th, 2003, what</p>

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<p>22:20:22 1 about Amendment No. 2, in Novell's view, gave</p> <p>22:20:27 2 the appearance that it supported SCO's claim</p> <p>22:20:32 3 that ownership of certain copyrights for UNIX</p> <p>22:20:35 4 had transferred to SCO in 1996?</p> <p>22:20:37 5 MR. BRAKEBILL: Just before you</p> <p>22:20:39 6 answer that, I just want to go on the record</p> <p>22:20:41 7 here to say that at least in part Novell's</p> <p>22:20:44 8 view is informed by the testimony of Greg</p> <p>22:20:46 9 Jones from last week.</p> <p>22:20:48 10 MR. NORMAND: Okay. Okay.</p> <p>22:20:55 11 MR. BRAKEBILL: Mr. LaSala can</p> <p>22:20:55 12 supplement that, to extent he is asked --</p> <p>22:20:55 13 Q. For this question --</p> <p>22:20:57 14 MR. BRAKEBILL: -- in terms of</p> <p>22:20:58 15 2003.</p> <p>22:20:59 16 Q. For this question I am asking, for</p> <p>22:21:02 17 purposes of this specific statement in this</p> <p>22:21:03 18 press release, if you can recall or if you can</p> <p>22:21:08 19 articulate Novell's view -- and understanding</p> <p>22:21:11 20 that you were on the short tame frame that you</p> <p>22:21:13 21 were talking -- but what about Amendment No. 2</p> <p>22:21:17 22 gave the appearance of supporting SCO's claims</p> <p>22:21:20 23 that ownership of certain copyrights for UNIX</p> <p>22:21:23 24 did transfer to SCO in 1996?</p>	<p>22:22:38 1 -- the discussions -- I assume there were some</p> <p>22:22:41 2 discussions within the Novell prior to this</p> <p>22:22:44 3 press release. Did those involve counsel or</p> <p>22:22:47 4 business discussions?</p> <p>22:22:48 5 A. They involved --</p> <p>22:22:49 6 Q. They involved you, I guess.</p> <p>22:22:51 7 A. Right. Yes. So they involved me, and</p> <p>22:22:52 8 they did involve discussions with business</p> <p>22:22:57 9 people that are probably privileged.</p> <p>22:23:00 10 So I guess since they involved me,</p> <p>22:23:03 11 they involved counsel. They did not involve</p> <p>22:23:07 12 communications with our outside counsel for</p> <p>22:23:11 13 the reasons that we have stated.</p> <p>22:23:12 14 Q. So to the extent that you were involved</p> <p>22:23:14 15 in any discussions about the release of this</p> <p>22:23:18 16 press release on June 6th, 2003 --</p> <p>22:23:18 17 A. Yeah.</p> <p>22:23:22 18 Q. -- you were giving legal advice, that's</p> <p>22:23:24 19 Novell's position?</p> <p>22:23:25 20 A. Yes.</p> <p>22:23:26 21 Q. Okay. Was there any aspect of these</p> <p>22:23:32 22 discussions within Novell after receipt of the</p> <p>22:23:35 23 signed version of Amendment No. 2 and before</p> <p>22:23:37 24 this press release was issued in which you</p>
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<p>22:21:25 1 A. Yeah, I think it was the --</p> <p>22:21:26 2 MR. BRAKEBILL: Form.</p> <p>22:21:28 3 THE WITNESS: I beg your pardon?</p> <p>22:21:30 4 MR. BRAKEBILL: I said, "form."</p> <p>22:21:31 5 A. I think it was the exception language</p> <p>22:21:34 6 that is in Amendment No. 2, the language which</p> <p>22:21:34 7 reads, "Except for the copyrights and</p> <p>22:21:34 8 trademarks owned by Novell as of the date of</p> <p>22:21:40 9 the agreement required for SCO to exercise its</p> <p>22:21:42 10 rights with respect to the acquisition of UNIX</p> <p>22:21:43 11 and UnixWare technologies."</p> <p>22:21:46 12 Q. And how did that language, in Novell's</p> <p>22:21:48 13 view, give the appearance of supporting SCO's</p> <p>22:21:51 14 claim?</p> <p>22:21:51 15 A. Well, it was -- it was new language to</p> <p>22:21:54 16 the agreement, and it modified language that</p> <p>22:21:59 17 certainly there was no ambiguity about; and it</p> <p>22:22:06 18 was our view at the time that a reader of this</p> <p>22:22:10 19 language, you know -- you know, might be able</p> <p>22:22:22 20 to conclude that SCO's claim of ownership did</p> <p>22:22:27 21 transfer, that SCO's claim of ownership was</p> <p>22:22:31 22 supported by this language.</p> <p>22:22:33 23 Q. And just for foundation -- I frankly</p> <p>22:22:37 24 don't recall if we talked about this last time</p>	<p>22:23:41 1 regarded yourself as operating only in a</p> <p>22:23:43 2 business advisory role?</p> <p>22:23:45 3 A. No.</p> <p>22:23:47 4 Q. When did Novell's view of the</p> <p>22:24:16 5 significance, or not, of this language in</p> <p>22:24:19 6 Amendment No. 2, change at all from the view</p> <p>22:24:22 7 it had formulated prior to the issuance of</p> <p>22:24:26 8 this June 6th press release? And I think we</p> <p>22:24:31 9 are going to start to thread on maybe --</p> <p>22:24:34 10 A. Yeah.</p> <p>22:24:35 11 Q. I just asked about timing.</p> <p>22:24:37 12 A. I don't think --</p> <p>22:24:39 13 MR. NORMAND: Well there is a</p> <p>22:24:40 14 foundation question in there.</p> <p>22:24:41 15 Q. I thought you had said Novell's view --</p> <p>22:24:45 16 maybe you didn't use the word "evolved" -- but</p> <p>22:24:47 17 Novell's view evolved or changed --</p> <p>22:24:47 18 A. Yeah.</p> <p>22:24:49 19 Q. -- is that true, at some point?</p> <p>22:24:50 20 A. Actually, I don't think it did change.</p> <p>22:24:52 21 I think our view has been consistent</p> <p>22:24:54 22 throughout that Amendment No. 2 did not affect</p> <p>22:24:58 23 the transfer of copyrights to SCO.</p> <p>22:24:59 24 Q. I should be clear. Has Novell's view</p>

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<p>15:29:04 1 A. I think that's correct.</p> <p>15:29:06 2 Q. Okay.</p> <p>15:29:09 3 A. Yes.</p> <p>15:29:10 4 Q. We had referred earlier to the</p> <p>15:29:14 5 Supplemental Topic No. 3, the internal</p> <p>15:29:16 6 projections or accountings.</p> <p>15:29:18 7 A. Yes.</p> <p>15:29:18 8 Q. And that was the one, where, as I</p> <p>15:29:21 9 recall, you said that you could find no record</p> <p>15:29:26 10 of any such projections or accountings.</p> <p>15:29:29 11 A. Yes.</p> <p>15:29:30 12 Q. Is that your recollection?</p> <p>15:29:31 13 A. It is.</p> <p>15:29:32 14 Q. Okay. And --</p> <p>15:29:36 15 MR. BRAKEBILL: "You" meaning</p> <p>15:29:38 16 Novell?</p> <p>15:29:39 17 Q. "You" meaning Novell?</p> <p>15:29:40 18 A. Correct.</p> <p>15:29:41 19 Q. Can I ask you what you did to undertake</p> <p>15:29:44 20 if there were any such projections or</p> <p>15:29:46 21 accountings?</p> <p>15:29:46 22 A. It wasn't me, but the company, as I</p> <p>15:29:53 23 understand it, made an inquiry of individuals</p> <p>15:29:56 24 in our finance organization who would be aware</p>	<p>15:31:00 1 company's view, and that is, you know, not</p> <p>15:31:02 2 necessarily.</p> <p>15:31:03 3 I mean, certainly the revenue</p> <p>15:31:07 4 associated with these licenses was significant</p> <p>15:31:12 5 and was recorded every quarter; and my sense</p> <p>15:31:18 6 is that it wasn't viewed as, you know, a</p> <p>15:31:22 7 revenue stream that was being -- was to be --</p> <p>15:31:25 8 was to be managed like the revenue streams in</p> <p>15:31:28 9 other parts of the business, that were</p> <p>15:31:31 10 associated with, you know, Novell software</p> <p>15:31:35 11 licenses or subscriptions.</p> <p>15:31:38 12 So I guess I'm not terribly</p> <p>15:31:42 13 surprised it.</p> <p>15:31:44 14 Q. The people you spoke with were people</p> <p>15:31:48 15 who have been with Novell since 1996, some of</p> <p>15:31:50 16 them, at least?</p> <p>15:31:51 17 A. One of them, at least. Mr. Russell has</p> <p>15:31:54 18 been with Novell since probably before that.</p> <p>15:31:58 19 The other one I am referring to is a</p> <p>15:32:00 20 gentleman named Chris Anderson, and he has not</p> <p>15:32:03 21 been with Novell since then.</p> <p>15:32:12 22 Q. We spoke earlier about the reference in</p> <p>15:32:21 23 the June 6th, 2003 press release to Amendment</p> <p>15:32:29 24 No. 2.</p>		
<p>15:30:01 1 of those -- of records of that sort, had they</p> <p>15:30:06 2 existed, and one of them was the current</p> <p>15:30:08 3 controller of the company, and another was the</p> <p>15:30:12 4 former controller of the company, who is now</p> <p>15:30:14 5 the CFO of the company.</p> <p>15:30:16 6 And so I guess I would have a high</p> <p>15:30:19 7 level of confidence in what they told me about</p> <p>15:30:24 8 that -- told us about that, which was there</p> <p>15:30:26 9 were no such accountings or projections.</p> <p>15:30:30 10 Q. Did it surprise you that they couldn't</p> <p>15:30:32 11 find any record of such accountings or</p> <p>15:30:34 12 projections?</p> <p>15:30:35 13 A. When I heard that was the case, it</p> <p>15:30:38 14 doesn't particularly surprise me.</p> <p>15:30:40 15 Q. Wouldn't you expect that there would be</p> <p>15:30:42 16 some such projections or accountings given the</p> <p>15:30:47 17 potential value of the royalty stream?</p> <p>15:30:50 18 MR. BRAKEBILL: Objection. Scope.</p> <p>15:30:51 19 If you have a personal view on it.</p> <p>15:30:53 20 THE WITNESS: I beg your pardon?</p> <p>15:30:54 21 MR. BRAKEBILL: If you have a</p> <p>15:30:56 22 personal view on that.</p> <p>15:30:56 23 A. Yeah, I guess I have a personal view on</p> <p>15:30:58 24 it, which is not representative of the</p>	<p>15:32:29 1 A. Yes.</p> <p>15:32:30 2 Q. And I think we did mark Amendment</p> <p>15:32:33 3 No. 2.</p> <p>15:32:34 4 MR. BRAKEBILL: Well, we used it.</p> <p>15:32:36 5 Q. Or we used it.</p> <p>15:33:01 6 A. Should I get the press release out?</p> <p>15:33:03 7 Q. No. It would be Amendment No. 2 that I</p> <p>15:33:05 8 would ask you about.</p> <p>15:33:06 9 A. Okay.</p> <p>15:33:07 10 Q. Last sentence of Paragraph A of</p> <p>15:33:12 11 Amendment No. 2 says, "However, in no event</p> <p>15:33:14 12 shall Novell be liable to SCO for any claims</p> <p>15:33:17 13 brought by any third party pertaining to said</p> <p>15:33:20 14 copyrights and trademarks."</p> <p>15:33:22 15 Do you see that language?</p> <p>15:33:23 16 A. I do.</p> <p>15:33:23 17 Q. Do you recall whether Novell took</p> <p>15:33:25 18 account of that language in making the</p> <p>15:33:28 19 statements it did in its June 6th, 2003 press</p> <p>15:33:31 20 release?</p> <p>15:33:32 21 A. Well, we took account of the entire</p> <p>15:33:37 22 Amendment No. 2 in making the statements that</p> <p>15:33:39 23 we did.</p> <p>15:33:40 24 Q. Do you recall, or do you know whether</p>		

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<p>15:33:43 1 Novell reached any particular conclusions with 15:33:46 2 respect to that last sentence of Paragraph A 15:33:49 3 of Amendment No. 2?</p>	<p>15:37:07 1 Kurger of Microsoft, and in the first 15:37:10 2 paragraph Mr. DeFazio says, "As you may know, 15:37:13 3 Novell transferred to the Santa Cruz</p>
<p>15:33:51 4 A. I don't recall that we did.</p>	<p>15:37:17 4 Operations Inc., its existing ownership</p>
<p>15:33:55 5 Q. In Novell's view does that last 15:33:57 6 sentence of Paragraph A of Amendment No. 2 15:34:00 7 support SCO's claim that there was a transfer 15:34:02 8 of the UNIX and UnixWare copyrights?</p>	<p>15:37:20 5 interest in UNIX system-based offerings and 15:37:23 6 related products (collectively transferred 15:37:23 7 products)." 15:37:25 8 Do you see that language?</p>
<p>15:34:05 9 MR. BRAKEBILL: I object as outside 15:34:08 10 the scope, to the extent you are asking his 15:34:10 11 view or Novell's view of this provision 15:34:12 12 because Greg Jones was that witness.</p>	<p>15:37:26 9 A. I do. 15:37:28 10 Q. Were there any internal communications 15:37:30 11 at Novell beginning in 2003 in which anyone 15:37:35 12 expressed the view that Novell had transferred</p>
<p>15:34:14 13 MR. NORMAND: Let me just ask you 15:34:15 14 that -- this is something that was prepared 15:34:17 15 for me -- but was Topic No. 2 one of the 15:34:19 16 topics that was broken down between Greg 15:34:22 17 and --</p>	<p>15:37:39 13 its existing ownership interests in UNIX- 15:37:42 14 system-based offerings to Santa Cruz in 1995, 15:37:50 15 or words to that effect? 15:37:52 16 A. Well, I would say if there were, the 15:37:58 17 ones that I'm aware of would be privileged 15:37:59 18 communications.</p>
<p>15:34:23 18 MR. BRAKEBILL: It was, and I was 15:34:24 19 going to -- after you were done, that was one 15:34:27 20 I had left on my list as not having been 15:34:30 21 addressed, at least.</p>	<p>15:38:02 19 Q. So there were no nonprivileged 15:38:05 20 communications in which you can recall anyone 15:38:07 21 offering the view in an internal discussion at 15:38:10 22 Novell that Novell had transferred its</p>
<p>15:34:32 22 It actually was addressed in part, 15:34:35 23 but you didn't you say "Hey Topic 2," but Greg 15:34:39 24 addressed pre-2003 and Mr. LaSala would</p>	<p>15:38:13 23 ownership interest in UNIX offerings or 15:38:16 24 UnixWare offerings under the APA?</p>
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<p>15:34:42 1 address Topic 2 to the extent it is 2003.</p>	<p>15:38:18 1 A. That's correct.</p>
<p>15:34:50 2 MR. NORMAND: That's where I guess 15:34:51 3 I -- so he could give me Novell's views on 15:34:56 4 these documents as of January 1st, 2003?</p>	<p>15:38:30 2 MR. BRAKEBILL: Are you still on 15:38:31 3 Topic 2? I have a chart. 15:38:32 4 MR. NORMAND: I should have done 15:38:34 5 that. Let's take a look at that.</p>
<p>15:35:01 5 I don't understand how the time 15:35:02 6 restriction pertains to this one.</p>	<p>15:38:35 6 MR. BRAKEBILL: You've already 15:38:36 7 addressed part of it. Just to be complete. 15:38:43 8 (Document tendered.)</p>
<p>15:35:04 7 MR. BRAKEBILL: What he is here to 15:35:06 8 testify to the Novell 2003 internal 15:35:09 9 communications.</p>	<p>15:38:43 9 EXHIBIT NO. 1114 MARKED 15:38:44 10 Q. So we have marked as Exhibit 1114 a 15:38:57 11 one-page document entitled "SCO's 30(b)(6) 15:39:02 12 Topic No. 2, with a paren (See also Topics 15:39:02 13 7,8, 24, S2)."</p>
<p>15:35:10 10 Greg Jones was Novell's witness for 15:35:12 11 all of the pre-2003 internal communications 15:35:15 12 and Novell's rights and obligations relating 15:35:17 13 to the APA.</p>	<p>15:39:15 14 The middle entries says "Amendment 15:39:18 15 No. 2," and the first bullet point, "By 15:39:20 16 sometime in May 2003, Novell became aware of 15:39:23 17 the possibility of an Amendment No. 2." 15:39:27 18 Do you see that, Mr. LaSala?</p>
<p>15:35:23 14 MR. NORMAND: Okay.</p>	<p>15:39:29 19 A. I do.</p>
<p>15:35:27 15 Q. Okay. Do you recall whether there were 15:35:30 16 any internal communications at Novell 15:35:33 17 regarding this last sentence of Paragraph A of 15:35:38 18 Amendment No. 2 that are not privileged?</p>	<p>15:39:29 20 Q. Can you identify with any more 15:39:33 21 specificity the date on which Novell became 15:39:35 22 aware of the possibility of an Amendment 15:39:37 23 No. 2?</p>
<p>15:35:41 19 A. None that are not privileged, that I 15:35:45 20 recall.</p>	<p>15:39:37 24 A. No, I can't.</p>
<p>15:35:50 21 Q. Let me show you, Mr. LaSala, what was 15:36:51 22 marked as Exhibit 1093, previously.</p>	
<p>15:36:54 23 Exhibit 1093 is a letter dated 15:37:01 24 January 22, 1996, from Mike DeFazio to Robert</p>	

EXHIBIT 25

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF GREG JONES ON
BEHALF OF NOVELL, INC.**

Civil No. 2-03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Ex. 1006

I, Greg Jones, declare as follows:

1. I am Associate General Counsel at Novell, Inc. ("Novell"). I have been employed as counsel in the Legal Department of Novell since 1992.

2. This declaration is submitted in connection with the lawsuit filed by the SCO Group, Inc. ("SCO"), against International Business Machines, Corporation ("IBM"), Caldera Systems, Inc. v. International Business Machines, Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003).

3. This declaration is based on Novell's knowledge and understanding of the matters described herein. I am authorized to submit this Declaration on behalf of Novell.

Novell's Retention of UNIX Assets

4. In 1995, Novell and a company called Santa Cruz Operation, Inc. ("Santa Cruz") entered into negotiations over the sale of certain business assets of Novell relating to its UNIX and UnixWare software business.

5. On September 19, 1995, Novell and Santa Cruz executed an Asset Purchase Agreement ("APA"). The APA provided each party with certain rights and obligations.

6. The parties entered into two Amendments to the APA. On December 6, 1995, Novell and Santa Cruz executed "Amendment No. 1." Novell and Santa Cruz subsequently executed "Amendment No. 2" on October 16, 1996.

7. Under the APA and its Amendments, Santa Cruz obtained a variety of assets, including assignment of tens of thousands of contracts and licenses, various trademarks, source code and binaries to UnixWare products, and physical assets such as furniture and personal computers. Santa Cruz also obtained the right to develop a "Merged Product," a derivative work that would run on Intel platforms.

8. Santa Cruz did not have the financial capacity to pay the purchase price contemplated by Novell for these acquired assets and rights. In order to bridge the price gap and consummate the transaction, Novell and Santa Cruz agreed that Novell would receive Santa Cruz

stock and retain certain rights as protection. For example, Novell retained the right to receive royalty payments under SVRX licenses, prior approval rights relating to new SVRX licenses and amended SVRX licenses, the right to direct Santa Cruz to take certain actions relating to SVRX licenses and the right to conduct audits of the SVRX license program.

9. Santa Cruz assumed several related obligations. One such obligation that Santa Cruz assumed under the APA was responsibility for administering the collection of royalty payments from SVRX Licenses. "SVRX Licenses" are defined by the APA to include "[a]ll contracts relating to" the various UNIX System releases and auxiliary products enumerated at Schedule 1.1(a)(VI) and Attachment A to Amendment No. 1. The APA provided that Santa Cruz shall collect and pass through to Novell 100% of all "SVRX Royalties" -- a term defined in the APA as "all royalties, fees and other amounts due under all SVRX Licenses." In return, Novell agreed to pay Santa Cruz an administrative fee of 5% of those royalty amounts. Under the APA, Santa Cruz also agreed to pay additional royalties to Novell relating to other products.

10. The APA transferred certain assets from Novell to Santa Cruz. However, as specified by Section V.A of Schedule 1.1(b) to the APA, certain assets were excluded from the transfer. Among the "Excluded Assets" from the APA asset transfer were "[a]ll copyrights and trademarks, except for the trademarks UNIX and UnixWare," "all patents," and "all right, title and interest to the SVRX Royalties, less the 5% fee for administering the collection thereof." The APA as executed on September 19, 1995, therefore, did not transfer any copyrights.

11. Novell also retained rights to supervise Santa Cruz's administration of SVRX licenses. For example, under Section 4.16(b) of the APA, Novell retained the "sole discretion" to direct Santa Cruz to amend, supplement, modify, waive or assign any rights under or to any SVRX Licenses; if Santa Cruz fails to take any such action, the APA specifically granted Novell the right to take these actions on behalf of Santa Cruz. Novell also retained the right to veto Santa Cruz's attempts to amend SVRX Licenses, subject to two exceptions laid out in Amendment No. 1 to the APA (where the amendment (i) "may be incidentally involved through its rights to sell and license UnixWare software or the Merged Product ... or future versions of

the Merged Product, or (ii) to allow a licensee under a particular SVRX License to use the source code of the relevant SVRX product(s) on additional CPU's or to receive an additional distribution, from [SCO], of such source code"). Novell also retained the right to veto Santa Cruz's attempts to enter into new SVRX Licenses, subject to one exception (as specified in (i) above or as otherwise approved in writing in advance by Novell on a case by case basis).

12. The APA gave Novell the right to confirm Santa Cruz's compliance with its contractual obligations under the SVRX licensing program. The APA explicitly provided that Novell "shall be entitled to conduct periodic audits" of Santa Cruz "concerning all royalties and payments due to Seller hereunder or under the SVRX Licenses." The APA required Santa Cruz to "diligently seek to collect all such royalties, funds and other amounts when due" and to "investigate and perform appropriate auditing and enforcement." The APA also required Santa Cruz to provide Novell monthly reports detailing the SVRX royalties it received.

SCO's Attempts to Acquire the UNIX Copyrights

13. In late 2002, SCO repeatedly contacted Novell. SCO requested access to or copies of any records concerning rights to UNIX, including any agreements between Novell and Santa Cruz. SCO also expressed its interest in a campaign to assert UNIX infringement claims against users of Linux. SCO asked Novell to partner with SCO in a Linux licensing program, under which SCO contemplated extracting a license fee from Linux end users to use the UNIX intellectual property purportedly contained in Linux. Novell refused to participate.

14. SCO further requested that Novell transfer its UNIX copyrights to SCO, thereby acknowledging that it did not own the UNIX copyrights. SCO contacted Novell on multiple occasions in late 2002 and early 2003. For example, SCO's CEO, Darl McBride, repeatedly contacted Novell and asked Novell to amend the Novell-Santa Cruz agreement to give SCO the UNIX copyrights. Novell rejected all of these requests.

15. Notwithstanding Novell's rejections, SCO embarked on a campaign in which it falsely asserted ownership over the same copyrights via public statements, a series of letters to Linux end users, several lawsuits against Linux distributors and end users, and a licensing program purporting to offer SCO's Intellectual Property Licenses for Linux. SCO has falsely claimed that Novell acquiesced to SCO's claims. Novell has not acquiesced to SCO's claims.

16. To the contrary, Novell vigorously contested SCO's claims in private correspondence with SCO at the very same time SCO was publicly claiming otherwise. For example:

- a. On May 12, 2003, SCO's CEO, Darl McBride, sent Novell a letter asserting that it owned the UNIX copyrights and that Linux end users were infringing those copyrights.
- b. On May 28, 2003, Novell's CEO, Jack Messman, responded by letter, asserting in no uncertain terms that "SCO is not the owner of the UNIX copyrights."
- c. After SCO registered its claim to the UNIX copyrights with the U.S. Copyright Office, Novell's General Counsel, Joseph LaSala wrote to SCO, again disputing its claim to ownership of the copyrights. In his August 4, 2003, letter, Mr. LaSala stated, "We dispute SCO's claim to ownership of these copyrights."

17. In September and October 2003, Novell attempted to protect its ownership of the UNIX copyrights and to correct SCO's erroneous registrations claiming ownership, by filing its own copyright registrations.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 24 day of September, 2006 in Provo, Utah.

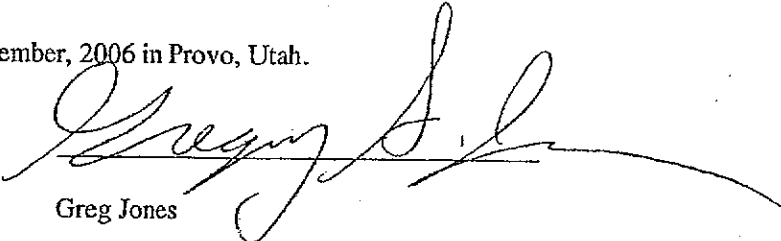

Greg Jones

EXHIBIT 26

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

1			
2			
3			
4	THE SCO GROUP, INC.,	:	Case No. 2:04CV00139
		:	
5	Plaintiff,	:	Videotaped Deposition of:
		:	
6	vs.	:	GREGORY JONES
		:	
7	NOVELL, INC.,	:	
		:	
8	Defendant.	:	
		:	

January 26, 2007 - 9:35 a.m.

Location: Hatch, James & Dodge
10 West Broadway, Suite 400
Salt Lake City, Utah 84111

Reporter: Teri Hansen Cronenwett
Certified Realtime Reporter, Registered Merit Reporter
Notary Public in and for the State of Utah

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1 and --

2 Q. Okay. Well, let's just stick with the definition

3 we have been using then, so then -- in the interest of time.

4 So again, with respect to the example we have been citing

5 that Novell retained certain rights, in order to, quote,

6 bridge the gap and consummate the transaction, you acquired

7 the knowledge of those facts from Novell because Novell is

8 the party that had the knowledge and understanding of that

9 fact. Is that correct?

10 A. Yes. That's -- I am making a declaration of

11 Novell's knowledge.

12 Q. Good. So my question with respect to privilege is,

13 if Novell told you that; Novell, your client, told you that,

14 and you have acknowledged that Novell has told you that and

15 this reflects Novell's having told you that, and there is no

16 privilege that applies to Novell's having told you that, why

17 is there a privilege that applies when someone at Novell gave

18 you that information? And that's for Ken and you.

19 MR. BRAKEBILL: Objection, privileged. To the

20 extent that the basis of your assertions here derive from

21 attorney-client communications, those are privileged, and

22 those should be excluded from your answer. To the extent

23 that the basis of the different paragraphs in your

24 declaration derive from something other than communications

25 of the attorney-client nature or through the work product

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1 doctrine as well, you can answer those questions.

2 A. So the information in here I either obtained from

3 counsel for Novell or I obtained in the process of doing

4 legal counsel for Novell. So to the extent I have knowledge

5 of those things, that's where it comes from.

6 MR. GONZALEZ: And so your instructions for him are

7 what, Ken, based on that statement?

8 MR. BRAKEBILL: Well, I think he -- to the extent

9 that's true, I instruct you not to answer.

10 THE WITNESS: Yeah. There's nothing remaining.

11 MR. GONZALEZ: Okay. Thank you.

12 MR. BRAKEBILL: However, I think there are areas

13 where you have said, just to kind of speed this along, that

14 you do have personal knowledge of, and the information was

15 derived from you.

16 THE WITNESS: Right.

17 MR. BRAKEBILL: And again, just in the interests of

18 expedition, I think you can get to those.

19 MR. GONZALEZ: Yeah, and I will get to those.

20 Q. (By Mr. Gonzalez) I'm interested right now in this

21 question of, you know, to what extent and now how did you get

22 the information from Novell, and I think you have answered

23 that now. Thank you.

24 So turning to page 3 of your declaration under the

25 subsection, the second subsection, let me just ask you

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1 generally and see maybe if we can avoid getting into every

2 little part of every sentence. I take it from your

3 declaration that starting in late 2002 you had the

4 opportunity or -- to communicate with SCO about several

5 topics, including the ownership of Unix copyrights?

6 MR. BRAKEBILL: Mischaracterizes testimony. You

7 can answer.

8 A. Let me see.

9 Q. (By Mr. Gonzalez) Does that --

10 A. Well --

11 Q. Let me just save us time. Did you have any

12 communications with SCO in late 2002?

13 A. Yes.

14 Q. Okay. Did some of those communications involve the

15 transfer -- not the transfer. Strike that. Did any of those

16 communications involve the ownership of Unix copyrights?

17 A. I believe so.

18 Q. Okay. And how many communications would you say

19 you have had with SCO about that topic?

20 MR. BRAKEBILL: Vague and ambiguous.

21 Q. (By Mr. Gonzalez) About the topic of the ownership

22 of Unix copyrights.

23 MR. BRAKEBILL: Just your original question said

24 late 2002. I don't know if you intentionally meant forever.

25 MR. GONZALEZ: Yeah, forever.

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1 A. Forever.

2 MR. BRAKEBILL: Vague and ambiguous.

3 A. So communication being a conversation, any form of

4 communication?

5 Q. (By Mr. Gonzalez) Yeah, with SCO. You can give me

6 a rough number. Are we in single digits?

7 A. It's --

8 Q. A range.

9 A. It's hard. I mean, anywhere from total maybe --

10 myself or just myself?

11 Q. Just, I am interested in your personal knowledge

12 because that's what you have told me here. It's based on

13 your personal knowledge.

14 A. Probably --

15 MR. BRAKEBILL: Just clarify. He said personal

16 knowledge, which might be different from --

17 MR. GONZALEZ: Yeah.

18 MR. BRAKEBILL: -- Whether it was just you.

19 MR. GONZALEZ: I want to clarify that. Yeah.

20 A. Anywhere from six to ten.

21 Q. (By Mr. Gonzalez) Okay. So let me ask you a

22 little bit more about personal knowledge here because we have

23 to clarify that, you know, with respect to the first part of

24 the declaration. When you told me that paragraphs 13 through

25 17 were based on your personal knowledge, do you mean that

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1 A. Yes.

2 Q. What was it?

3 A. Well, that Darl pointed out to me that the asset
4 purchase agreement excluded copyrights from being transferred
5 and told me that he thought that was a clerical error.

6 Q. Uh-huh.

7 A. And that's one where I know the phraseology that he
8 used, and basically he was asking for us to change that. I
9 can't remember the specific language that he used in the
10 requests or that Chris used in his request, but I definitely
11 went away from every exchange just saying, we have an
12 agreement that expressly excludes copyrights. They want
13 that -- they don't want that to be the case.

14 Q. Uh-huh.

15 A. And the only way that can be achieved is for that
16 to be changed, the agreement to be changed.

17 Q. So I want to understand a little bit better. They
18 told you that they saw this clerical error in the agreement.
19 Is that correct?

20 A. Darl.

21 Q. Darl told you?

22 A. Darl pointed that out.

23 Q. Did Mr. McBride at any point tell you that he
24 believed that because of that clerical error Novell and Santa
25 Cruz did not intend for the copyrights to be transferred to

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1 Santa Cruz?

2 A. Yeah. I think he -- he expressed his belief that
3 they should have been transferred.

4 Q. I'm not asking about whether they were or were not
5 transferred. That would be a legal question, you know,
6 whether the document succeeded in transferring. I'm asking
7 you whether he ever told you that Novell and Santa Cruz did
8 not mean -- did not intend for the APA to transfer the sacra
9 -- I'm sorry, the --

10 A. I can't recall the --

11 Q. Let me finish the question, I'm sorry.

12 A. Yeah.

13 Q. To transfer the copyrights. Did he ever tell you
14 that?

15 A. Well, I think that's -- when he calls it a clerical
16 error, I think that's what he's telling me. And I can't
17 recall the specific language that he was using, but you know,
18 to me when he says there's an error in the agreement, he's
19 making -- he's saying that that must -- that can't be what
20 was intended.

21 Q. Okay. So --

22 A. So --

23 Q. Okay. Great. So then okay. So is it fair to say
24 that he was seeking some way to correct that clerical error?

25 A. Yes.

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1 Q. Okay. Well, why didn't you say that in your
2 declaration?

3 MR. BRAKEBILL: Argumentative.

4 A. Yeah. Also, I think I prepared this declaration in
5 consultation with counsel.

6 Q. (By Mr. Gonzalez) Okay. Great. I understand.
7 Thank you. In the discussion we have had about this clerical
8 error, did that lead to any discussion of a document that
9 might correct that error or clarify the APA so that, you
10 know, the intent of the parties to the APA would be clearly
11 reflected therein?

12 A. Yeah. Eventually. We had -- initially Darl had
13 made and his assistant had made repeated requests for Novell
14 to give them access to documents and things of that nature
15 that he wanted to -- that related to Unix that he wanted to
16 research, and we didn't agree to that. He kept pressing and
17 pressing and being persistent, and Chris was being dutifully
18 persistent, I think, too.

19 And I -- and so at some point I just told them --
20 and but the request was turned down. So ultimately I said,
21 look, I can't -- I can't give you access to documents. If
22 you have a specific request to change something, you know, if
23 you want to give me a document, I'll look at it.

24 Q. They were asking you to search for what kinds of
25 documents?

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1 A. They were vague.

2 Q. Okay.

3 A. But it was basically documents just relating to
4 Unix, SCO's rights with respect to Unix. Joanie Bingham,
5 Darl's assistant said, you know, she wasn't sure what Darl
6 was after. It was for IP tracking. Darl had told us that --
7 in -- on October 10th he told me in a phone call that SCO was
8 starting to look into the possibilities of Linux end users
9 using Unix code, and they were interested in understanding
10 that better, understanding their rights better. And so you
11 know, in that context they were asking for documents.

12 Q. So in the context of seeking a better understanding
13 of their rights, did you associate that with that clerical
14 error that you were talking about that they wanted to
15 clarify, you know, what that error meant and what maybe
16 should have been there in lieu of the error?

17 A. Not initially. Initially I didn't know. You know,
18 they were just these general requests for documents, and then
19 when we weren't providing the documents, then at some point
20 the conversation shifted to, look, the asset purchase
21 agreement says this, and you know, it's a clerical error
22 and --

23 Q. Okay. Did you have a view at the time as to
24 whether -- strike that. What was your response to
25 Mr. McBride's or Mr. Sontag's request for these additional

47 (Pages 182 to 185)