

## **EXHIBIT 13**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

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THE SCO GROUP, INC.,

Plaintiff/Counterclaim Defendant,

vs.

No. 2:04CV00139

NOVELL, INC.,

Defendant/Counterclaim Plaintiff

\_\_\_\_\_/

Videotaped Deposition of

STEVEN M. SABBATH

\_\_\_\_\_  
Monday, February 12, 2007

Reported by:  
Leslie Rockwood

CSR No. 3462

Job No. 191637

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<p>09:55:10 1 A. Well, their chief negotiator, their  09:55:15 2 counterpart to our Geoff and Jim, was a fellow named Ed  09:55:21 3 Chatlos, who was stationed in New Jersey, worked for  09:55:26 4 Novell out of New Jersey. He was their project manager.  09:55:31 5 There were a few others from Utah that I met from time to  09:55:35 6 time. I can't recall their names or their titles. To  09:55:40 7 some extent, David Bradford, their general counsel, was  09:55:44 8 involved. He did appear in California at least once,  09:55:49 9 that I can recall and worked on the deal with us. And  09:55:52 10 then, of course, there were their Wilson Sonsini outside  09:55:59 11 counsel.  09:55:59 12 Q. Can you recall any of the attorneys from  09:56:00 13 Wilson that you dealt with?  09:56:02 14 A. Well, Tor Braham was their lead. He was Ed  09:56:07 15 Leonard's counterpart. Tor Braham, and I think his  09:56:13 16 number 2 would have Aaron Alter, who would have been  09:56:16 17 Scott Lester's counterpart on the Wilson side.  09:56:21 18 Q. Did you have occasion during the negotiations  09:56:23 19 of this potential transaction to review any draft  09:56:27 20 agreements embodying the transaction?  09:56:29 21 A. Well, the asset purchase agreement,  09:56:32 22 certainly. There were a lot of agreements and exhibits  09:56:35 23 and schedules, and I can't tell you I reviewed every  09:56:39 24 single one. That may not have been possible for anybody  09:56:41 25 to do. But the asset purchase agreement, certainly.</p>	<p>09:58:49 1 Q. The agreement says, "On the terms and subject  09:58:51 2 to the conditions set forth in this agreement, seller  09:58:55 3 will sell, convey, transfer, assign and deliver to buyer,  09:58:59 4 and buyer will purchase and acquire from seller on the  09:59:03 5 closing date as defined in Section 1.7 all of sellers  09:59:08 6 right, title, and interest in and to the assets and  09:59:11 7 properties of seller relating to the business,  09:59:14 8 collectively the assets, identified on Schedule 1.1(a)  09:59:18 9 hereto. Notwithstanding the foregoing, the assets to be  09:59:22 10 so purchased shall not include those assets, the excluded  09:59:26 11 assets set forth on Schedule 1.1(b)."  09:59:29 12 Do you see that language?  09:59:30 13 A. I do, yes.  09:59:31 14 Q. Does this language refresh your recollection  09:59:34 15 at all as to the nature of the business that was being  09:59:37 16 sold under the APA?  09:59:41 17 A. Well, I mean, as I said before, it was the  09:59:44 18 entire UNIX business that Novell had was going to Santa  09:59:50 19 Cruz Operation.  09:59:52 20 Q. Was it ever your understanding during the  09:59:54 21 negotiations leading up to the APA or thereafter that  10:00:01 22 copyrights in the UNIX business were being excluded from  10:00:04 23 the assets transfer?  10:00:05 24 A. No, copyrights were going with the assets.  10:00:25 25 Q. I'm turning, Mr. Sabbath, to the schedule</p>
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<p>09:57:16 1 Q. I'm handing you, Mr. Sabbath, what's  09:57:18 2 previously been marked as Exhibit 1 titled "Asset  09:57:22 3 Purchase Agreement By and Between The Santa Cruz  09:57:26 4 Operation, Inc., and Novell, Inc.," dated as of  09:57:28 5 September 19th, 1995.  09:57:30 6 Do you recognize the document?  09:57:31 7 A. I do, yes.  09:57:33 8 Q. I wanted to ask you about some language in  09:57:58 9 this agreement, Mr. Sabbath. I'm looking at the page  09:58:00 10 ending with the Bates Number 900 on the bottom right.  09:58:10 11 A. Okay.  09:58:12 12 Q. If you look at paragraph A, in the recitals?  09:58:18 13 A. Uh-huh.  09:58:19 14 Q. It says, "Sellers engage in the business of  09:58:22 15 developing a line of software products currently known as  09:58:26 16 UNIX and UnixWare, the sale of binary and source code  09:58:30 17 licenses to various versions of UNIX and UnixWare, the  09:58:35 18 support of such products and the sale of other products  09:58:37 19 which are directly related to UNIX and UnixWare,  09:58:40 20 collectively, the business."  09:58:41 21 Do you see that language?  09:58:42 22 A. I do.  09:58:43 23 Q. And then if you look down on that same page  09:58:46 24 at Section 1.1(a)?  09:58:48 25 A. Uh-huh.</p>	<p>10:00:29 1 referred to in that Section 1.1(a), and that begins on  10:00:34 2 page Bates Number ending 950.  10:00:42 3 A. 950. Okay.  10:00:53 4 Q. Bates Number ending 950 is titled "Schedule  10:00:57 5 1.1(a), Assets."  10:00:59 6 A. Uh-huh.  10:01:00 7 Q. And Roman Numeral I -- let me just read it  10:01:03 8 for the record: "All rights and ownership of UNIX and  10:01:05 9 UnixWare, including but not limited to all versions of  10:01:08 10 UNIX and UnixWare and all copies of UNIX and UnixWare  10:01:13 11 including revisions and updates and process" --  10:01:15 12 A. Uh-huh.  10:01:15 13 Q. -- "and all technical design, development,  10:01:18 14 installation, operation and maintenance information  10:01:22 15 concerning UNIX and UnixWare, including source code,  10:01:28 16 source documentation, source listings and annotations,  10:01:34 17 appropriate engineering notebooks, test data and test  10:01:39 18 results, as well as all reference manuals and support  10:01:42 19 materials normally distributed by seller to end-users and  10:01:46 20 potential end-users in connection with the distribution  10:01:50 21 of UNIX and UnixWare, such assets to include without  10:01:53 22 limitation the following."  10:01:55 23 Do you see that language?  10:01:55 24 A. I do.  10:01:56 25 Q. Do you recall reviewing that language at the</p>

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<p>10:14:09 1 copyrights, et cetera, went from Novell to Santa Cruz</p> <p>10:14:15 2 Operation when Novell sold the UNIX business to Santa</p> <p>10:14:19 3 Cruz Operation.</p> <p>10:14:19 4 Q. Paragraph A says: "With respect to Schedule</p> <p>10:14:23 5 1.1(b) of the agreement entitled 'Excluded Assets,'</p> <p>10:14:27 6 Section V, subsection A shall be revised to read: 'All</p> <p>10:14:32 7 copyrights and trademarks except for the copyrights and</p> <p>10:14:35 8 trademarks owned by Novell as of the date of the</p> <p>10:14:38 9 agreement required for SCO to exercise its rights with</p> <p>10:14:45 10 respect to the acquisition of UNIX and UnixWare</p> <p>10:14:47 11 technologies."</p> <p>10:14:48 12 A. Uh-huh.</p> <p>10:14:48 13 Q. "However, in no event shall Novell be liable</p> <p>10:14:53 14 to SCO for any claim brought by any third party</p> <p>10:14:55 15 pertaining to said copyrights and trademarks."</p> <p>10:14:57 16 Do you see that language?</p> <p>10:14:58 17 A. I do, yes.</p> <p>10:14:59 18 Q. In your view, as of the execution of the APA,</p> <p>10:15:02 19 what copyrights were required for SCO to exercise its</p> <p>10:15:06 20 rights with respect to the acquisition of UNIX and</p> <p>10:15:08 21 UnixWare technologies?</p> <p>10:15:10 22 MR. JACOBS: Objection. Vague and ambiguous</p> <p>10:15:11 23 calls for speculation, lacks foundation, ambiguous as to</p> <p>10:15:15 24 time.</p> <p>10:15:15 25 THE WITNESS: Well, you would need all of the</p>	<p>10:16:59 1 the execution of the APA, Santa Cruz had occasion to</p> <p>10:17:02 2 enter into source code licenses with any third parties in</p> <p>10:17:06 3 which Santa Cruz licensed UNIX or UnixWare source code to</p> <p>10:17:09 4 those third parties?</p> <p>10:17:09 5 A. Well, I mean, we routinely licensed source</p> <p>10:17:15 6 code to customers who needed it for development purposes,</p> <p>10:17:18 7 for supporting their own customer base, what have you.</p> <p>10:17:39 8 Q. And at the time, did you have a view as to</p> <p>10:17:42 9 what gave Santa Cruz the right to enter into such</p> <p>10:17:46 10 licenses?</p> <p>10:17:47 11 A. We owned the technology, you know, lock,</p> <p>10:17:49 12 stock, and barrel.</p> <p>10:17:52 13 Q. Do you know whether at any time after the</p> <p>10:18:05 14 execution of the APA, Novell entered into any UNIX or</p> <p>10:18:09 15 UnixWare licenses with any third parties in which Novell</p> <p>10:18:12 16 licensed UNIX or UnixWare source code to that third</p> <p>10:18:16 17 party?</p> <p>10:18:16 18 A. Well, are you referring to the IBM issue?</p> <p>10:18:18 19 Q. No.</p> <p>10:18:19 20 A. "No"? Other than that, I don't recall any</p> <p>10:18:23 21 such case.</p> <p>10:18:25 22 Q. And I understood your question to mean to</p> <p>10:18:29 23 refer to the IBM issue that resulted in the paragraph B,</p> <p>10:18:32 24 C, and D of Amendment Number 2?</p> <p>10:18:35 25 A. That's correct.</p>
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<p>10:15:19 1 copyrights.</p> <p>10:15:20 2 Q. BY MR. NORMAND: And why do you say that?</p> <p>10:15:21 3 A. To do the future development, you would need</p> <p>10:15:26 4 the copyrights, to license the technology the way you saw</p> <p>10:15:33 5 fit, you would need the copyrights. My gosh, if you</p> <p>10:15:35 6 didn't own the copyrights, how could you even go after</p> <p>10:15:38 7 somebody that's pirating your software? How could you</p> <p>10:15:42 8 enforce your rights in the technology? So you would need</p> <p>10:15:45 9 all of the copyrights and binaries and source code.</p> <p>10:15:49 10 Q. At any time after the execution of Amendment</p> <p>10:15:51 11 Number 2, did Santa Cruz ever have occasion to ask Novell</p> <p>10:15:55 12 to transfer any UNIX or UnixWare copyrights to Santa</p> <p>10:16:00 13 Cruz?</p> <p>10:16:00 14 A. Not that I recall.</p> <p>10:16:01 15 Q. Did you ever have an understanding during</p> <p>10:16:10 16 your tenure at Santa Cruz that Santa Cruz was obligated</p> <p>10:16:13 17 to ask Novell to transfer particular UNIX and UnixWare</p> <p>10:16:16 18 copyrights?</p> <p>10:16:17 19 A. No, no.</p> <p>10:16:25 20 Q. No one from Santa Cruz ever told you that</p> <p>10:16:28 21 that was the process in place that needed to be pursued</p> <p>10:16:32 22 with Novell?</p> <p>10:16:32 23 MR. JACOBS: Objection. Leading.</p> <p>10:16:33 24 THE WITNESS: I don't recall that.</p> <p>10:16:58 25 Q. BY MR. NORMAND: Do you know whether after</p>	<p>10:18:50 1 Q. Did Santa Cruz have occasion to enter into</p> <p>10:18:53 2 what's been described as Project Monterey with IBM at</p> <p>10:18:56 3 some point in the late 1990s?</p> <p>10:18:58 4 A. Yes, that's right.</p> <p>10:18:59 5 Q. And I guess at a high level, what was your</p> <p>10:19:03 6 understanding of Project Monterey?</p> <p>10:19:06 7 MR. JACOBS: Objection. Can we go off the</p> <p>10:19:08 8 record for a second because I think you and I can do</p> <p>10:19:11 9 something more efficiently.</p> <p>10:19:14 10 THE VIDEOGRAPHER: We are now going off the</p> <p>10:19:16 11 record. The time is 10:20 a.m.</p> <p>10:19:19 12 (Recess.)</p> <p>10:35:45 13 THE VIDEOGRAPHER: We are now back on the</p> <p>10:36:00 14 video record. The time is 10:37 a.m.</p> <p>10:36:04 15 Q. BY MR. NORMAND: Before the break,</p> <p>10:36:05 16 Mr. Sabbath, I had asked you what your understanding was</p> <p>10:36:09 17 at a high level of what Project Monterey is.</p> <p>10:36:14 18 A. Yeah, I can't recall the timing, but Project</p> <p>10:36:19 19 Monterey was a -- was to be a joint venture between Santa</p> <p>10:36:28 20 Cruz Operation and IBM to jointly develop future UNIX</p> <p>10:36:32 21 products and to jointly market them globally. Santa Cruz</p> <p>10:36:38 22 Operation, primarily through the distribution channels,</p> <p>10:36:41 23 to small and medium business, and IBM primarily to big</p> <p>10:36:45 24 companies.</p> <p>10:36:46 25 I guess Santa Cruz Operation also to other</p>

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<p>13:45:13 1 Q. How does that language comport with your</p> <p>13:45:15 2 understanding today regarding the meaning and the</p> <p>13:45:17 3 parties' intent under Amendment Number 2?</p> <p>13:45:20 4 A. Well, the last sentence here, I don't know</p> <p>13:45:25 5 whether they ever executed an instrument, I don't -- I</p> <p>13:45:29 6 have no idea. I don't know why such an instrument would</p> <p>13:45:32 7 have been required. The APA states that it transfers.</p> <p>13:45:38 8 Going back up into this paragraph 26, actually, they may</p> <p>13:45:45 9 have identified the copyrights and trademarks. I'm not</p> <p>13:45:50 10 100 percent sure. But there may have been some exhibit</p> <p>13:45:53 11 in the APA where they actually listed the copyrights and</p> <p>13:45:57 12 trademarks.</p> <p>13:45:57 13 But I mean, you know, keep in mind, the</p> <p>13:46:01 14 trademark UNIX was actually -- had been sold by Novell to</p> <p>13:46:04 15 X Open. So that trademark, the language here is a little</p> <p>13:46:10 16 confusing and certainly isn't 100 percent accurate.</p> <p>13:46:13 17 Q. When you say the language here, do you mean</p> <p>13:46:15 18 the language --</p> <p>13:46:16 19 A. In this paragraph 26, I'm sorry.</p> <p>13:46:18 20 Q. -- of your declaration?</p> <p>13:46:30 21 Is it your view that Amendment Number 2</p> <p>13:46:32 22 created a process by which Santa Cruz would go to Novell</p> <p>13:46:35 23 and specify the copyrights that Santa Cruz believed was</p> <p>13:46:38 24 required to exercise its rights with respect to UNIX and</p> <p>13:46:41 25 UnixWare technologies?</p>	<p>13:48:21 1 agreement, it was -- I'm not sure exactly what that</p> <p>13:48:24 2 transaction between Novell and X Open was all about, but</p> <p>13:48:28 3 we were kind of midstream in some transition period of</p> <p>13:48:31 4 that mark moving over to X Open. That's the only IP I</p> <p>13:48:37 5 can think of that was in kind of limbo.</p> <p>13:48:48 6 Q. To the extent this declaration could be read</p> <p>13:48:58 7 to suggest your view that Novell had retained the UNIX</p> <p>13:49:02 8 and UnixWare copyrights, is that an accurate reflection</p> <p>13:49:09 9 of your understanding of that issue?</p> <p>13:49:10 10 MR. JACOBS: Object to the form of the</p> <p>13:49:13 11 question.</p> <p>13:49:13 12 THE WITNESS: My understanding is that they</p> <p>13:49:15 13 did not retain any copyrights pertaining to the UNIX</p> <p>13:49:18 14 technology.</p> <p>13:49:31 15 Q. BY MR. NORMAND: As you sit here today, are</p> <p>13:49:33 16 you satisfied that this declaration accurately reflects</p> <p>13:49:37 17 your views regarding the issues we've discussed?</p> <p>13:49:40 18 A. Well, I mean, this declaration was a quick</p> <p>13:49:43 19 and dirty, you know, done before the holidays over the</p> <p>13:49:47 20 phone with an associate in -- somewhere in the East Coast</p> <p>13:49:50 21 and me. And, I mean, it's, you know, close enough for</p> <p>13:49:54 22 government work, if you want to use that phrase, but it's</p> <p>13:49:57 23 a hundred percent accurate, no, not at all.</p> <p>13:49:59 24 Q. Do you think the views that you've</p> <p>13:50:01 25 communicated on these issues today are a reflection of</p>
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<p>13:46:42 1 A. No, no.</p> <p>13:46:43 2 Q. If you look at paragraph 29 of your</p> <p>13:47:07 3 declaration, you say: "It is my understanding based upon</p> <p>13:47:12 4 my review of plaintiff's Amended Complaint that plaintiff</p> <p>13:47:15 5 claims to have acquired all right, title, and interest in</p> <p>13:47:18 6 and to UNIX System V operating system source code,</p> <p>13:47:23 7 software and sublicensing agreements, together with</p> <p>13:47:26 8 copyrights, additional licensing rights in and to UNIX</p> <p>13:47:30 9 System V and claims against all parties breaching such</p> <p>13:47:34 10 agreements. I understand that plaintiff also claims to</p> <p>13:47:36 11 control the right of all UNIX vendors to use and</p> <p>13:47:40 12 distribute UNIX System V. I believe that these claims</p> <p>13:47:42 13 are incorrect. As described above in relation to the</p> <p>13:47:45 14 related agreements and Amendment Number 2, Novell</p> <p>13:47:49 15 retained certain rights under the UNIX System V licensing</p> <p>13:47:53 16 agreements as well as certain UNIX System V intellectual</p> <p>13:47:56 17 property as described above."</p> <p>13:47:58 18 Do you see that language?</p> <p>13:47:58 19 A. I do.</p> <p>13:47:59 20 Q. How does that language comport with your view</p> <p>13:48:03 21 today as to what, if any, UNIX System V intellectual</p> <p>13:48:06 22 property rights Novell retained under the APA?</p> <p>13:48:10 23 A. Well, the only thing I can think of is that</p> <p>13:48:13 24 UNIX trademark, that bizarre transaction where it went to</p> <p>13:48:17 25 X Open, and at the time we did the asset purchase</p>	<p>13:50:04 1 your having spent more time thinking about the issues</p> <p>13:50:07 2 addressed in this declaration?</p> <p>13:50:08 3 A. Well, not only thinking about the issues, but</p> <p>13:50:10 4 actually reading the documents.</p> <p>13:50:21 5 MR. NORMAND: Michael, I'm going to take a</p> <p>13:50:24 6 break now, and it may be that I'm done, but if not, I'll</p> <p>13:50:27 7 have maybe five or ten minutes.</p> <p>13:50:29 8 MR. JACOBS: Okay.</p> <p>13:50:30 9 THE VIDEOGRAPHER: We are now going off the</p> <p>13:50:32 10 video record. The time is 1:51 p.m.</p> <p>13:50:35 11 (Recess.)</p> <p>14:08:15 12 THE VIDEOGRAPHER: We are now back on the</p> <p>14:08:25 13 video record. The time is 2:09 p.m.</p> <p>14:08:28 14 Q. BY MR. NORMAND: Good afternoon, Mr. Sabbath</p> <p>14:08:30 15 Do you recall from your participation in the negotiation</p> <p>14:08:33 16 of the APA whether the issue of patents arose?</p> <p>14:08:36 17 A. It did, yes.</p> <p>14:08:38 18 Q. And in what way did it arise?</p> <p>14:08:41 19 A. Somewhere in the negotiation, I'm pretty sure</p> <p>14:08:46 20 it was Tor Braham, the Wilson Sonsini outside counsel,</p> <p>14:08:51 21 told us that there were no patents that we were to</p> <p>14:08:55 22 receive as part of the assets.</p> <p>14:09:01 23 Q. And did you understand why Novell was making</p> <p>14:09:03 24 that representation?</p> <p>14:09:04 25 A. Well, we then tried to find out, you know,</p>

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<p>16:40:49 1 A. That's correct.</p> <p>16:40:49 2 Q. It's not hard to say "all" or "the" to convey</p> <p>16:40:52 3 that intent; right?</p> <p>16:40:52 4 MR. NORMAND: Objection to form.</p> <p>16:40:54 5 Q. BY MR. JACOBS: Right?</p> <p>16:40:54 6 A. I suppose so.</p> <p>16:40:55 7 Q. And if you look at Amendment Number 2, it</p> <p>16:40:59 8 doesn't say that, does it?</p> <p>16:41:02 9 MR. NORMAND: Objection to form.</p> <p>16:41:04 10 THE WITNESS: If you're saying the word "all"</p> <p>16:41:05 11 isn't there, you're absolutely right.</p> <p>16:41:07 12 Q. BY MR. JACOBS: And a simple expression like</p> <p>16:41:07 13 "the UNIX copyrights" isn't there, either?</p> <p>16:41:11 14 MR. NORMAND: Objection to form.</p> <p>16:41:11 15 THE WITNESS: The UNIX copyrights.</p> <p>16:41:12 16 Q. BY MR. JACOBS: I'm sorry, looking at Exhibit</p> <p>16:41:15 17 Number 2, sir.</p> <p>16:41:16 18 A. Oh, with respect -- well, it says "all</p> <p>16:41:20 19 copyrights and trademarks."</p> <p>16:41:22 20 Q. That's the exclusionary part.</p> <p>16:41:24 21 A. Oh, let me read it. Oh, except for the</p> <p>16:41:32 22 copyrights and trademarks covered by Novell -- yeah, it</p> <p>16:41:36 23 doesn't say "except for all the copyrights and</p> <p>16:41:40 24 trademarks." True.</p> <p>16:41:43 25 Q. And when it says the copyrights necessary to</p>	<p>16:43:07 1 Q. BY MR. JACOBS: SCO wasn't going to enter</p> <p>16:43:10 2 into new SVRX licenses; correct?</p> <p>16:43:12 3 A. Right. We didn't want to do that, anyway.</p> <p>16:43:14 4 Q. So you didn't need the copyright necessary to</p> <p>16:43:16 5 enter into new SVRX licenses?</p> <p>16:43:18 6 MR. NORMAND: Objection to form.</p> <p>16:43:19 7 THE WITNESS: But we did need to protect the</p> <p>16:43:23 8 technology. We didn't want somebody to be able to go off</p> <p>16:43:27 9 and pirate it, for example, so we needed the copyright in</p> <p>16:43:31 10 order to defend the property.</p> <p>16:43:32 11 Q. BY MR. JACOBS: Did you ever take such a step</p> <p>16:43:35 12 while you were at Santa Cruz?</p> <p>16:43:36 13 A. Well, with respect to SVRX?</p> <p>16:43:39 14 Q. Correct.</p> <p>16:43:39 15 A. I don't recall that.</p> <p>16:43:40 16 Q. And with respect to the code that you</p> <p>16:43:42 17 developed at UnixWare, we established -- the UnixWare</p> <p>16:43:45 18 code that Santa Cruz developed, we established earlier</p> <p>16:43:48 19 that you would own that by virtue of the operation of</p> <p>16:43:52 20 copyright law; correct?</p> <p>16:43:53 21 MR. NORMAND: Objection to form.</p> <p>16:43:54 22 THE WITNESS: Yeah, it may not be that</p> <p>16:43:57 23 simple, but if what you're getting at is anything we</p> <p>16:44:00 24 developed, we would hold a copyright in, true, but there</p> <p>16:44:04 25 might be some other older UNIX code in it, okay? Which</p>
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<p>16:41:48 1 carry on the business -- do you want to read that</p> <p>16:41:50 2 expression again?</p> <p>16:41:52 3 A. Okay. "Except for the copyrights and</p> <p>16:41:56 4 trademarks owned by Novell as of the date of the</p> <p>16:41:58 5 agreement, required for SCO to exercise its rights with</p> <p>16:42:03 6 respect to the acquisition of UNIX and UnixWare</p> <p>16:42:07 7 technologies."</p> <p>16:42:09 8 Q. So it's -- refers to the exercise of rights;</p> <p>16:42:13 9 correct?</p> <p>16:42:13 10 MR. NORMAND: Objection. Form.</p> <p>16:42:14 11 THE WITNESS: Yes.</p> <p>16:42:16 12 Q. BY MR. JACOBS: And up until the time that</p> <p>16:42:20 13 you left Santa Cruz/Tarantella, what copyright rights in</p> <p>16:42:28 14 UNIX did Santa Cruz need in order to carry on the</p> <p>16:42:33 15 business contemplated by the Asset Purchase Agreement?</p> <p>16:42:36 16 MR. NORMAND: Objection. Asked and answered.</p> <p>16:42:37 17 THE WITNESS: Well, once we sold the business</p> <p>16:42:39 18 to Caldera, now The SCO Group, and became Tarantella, we</p> <p>16:42:46 19 didn't need those rights. Up until then, you would need</p> <p>16:42:50 20 all rights to run your business. You don't know what</p> <p>16:42:53 21 you're going to be doing day-to-day, what kinds of</p> <p>16:42:56 22 situations you'll find yourself in with potential</p> <p>16:42:59 23 partners, with potential customers. So you want all</p> <p>16:43:03 24 rights to do anything that you deem fit with the</p> <p>16:43:06 25 technology.</p>	<p>16:44:08 1 could be a problem if you don't own the copyright to it.</p> <p>16:44:10 2 Q. BY MR. JACOBS: Well, the specific right you</p> <p>16:44:12 3 need in order to effectuate that, based on your knowledge</p> <p>16:44:15 4 and experience in the software industry, is the right to</p> <p>16:44:18 5 create a derivative work; correct?</p> <p>16:44:20 6 MR. NORMAND: Object to form.</p> <p>16:44:21 7 THE WITNESS: Well, you definitely need that,</p> <p>16:44:23 8 but you can do that as a licensee.</p> <p>16:44:25 9 Q. BY MR. JACOBS: In fact, what you really need</p> <p>16:44:26 10 from Novell is an explicit or implied license in order to</p> <p>16:44:28 11 evolve the UnixWare product as contemplated by the Asset</p> <p>16:44:30 12 Purchase Agreement; correct?</p> <p>16:44:31 13 MR. NORMAND: Objection to the form.</p> <p>16:44:32 14 THE WITNESS: That would have been a</p> <p>16:44:34 15 different form of transaction. It's not -- you know, we</p> <p>16:44:38 16 were already a licensee. It's not what we wanted to do.</p> <p>16:44:42 17 We wanted to own the technology.</p> <p>16:44:45 18 Q. BY MR. JACOBS: But in order to carry out the</p> <p>16:44:47 19 business contemplated by the Asset Purchase Agreement,</p> <p>16:44:50 20 we've established that that business did not include new</p> <p>16:44:53 21 SVRX licenses; correct?</p> <p>16:44:55 22 MR. NORMAND: Objection to form.</p> <p>16:44:56 23 THE WITNESS: That's right.</p> <p>16:44:58 24 Q. BY MR. JACOBS: It did include creating this</p> <p>16:45:00 25 unified UNIX, and more particularly, the Eiger and UNIX</p>

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<p>16:52:44 1 leave the deposition open.</p> <p>16:52:45 2 From our standpoint, until that's resolved.</p> <p>16:52:49 3 I hope we won't need to get further in touch with you.</p> <p>16:52:52 4 THE WITNESS: Okay. I have no idea what</p> <p>16:52:53 5 you're talking about, and that's probably a good thing.</p> <p>16:52:56 6 MR. NORMAND: I have a few questions.</p> <p>16:52:56 7 FURTHER EXAMINATION BY MR. NORMAND</p> <p>16:52:59 8 Q. With respect to Exhibit 49, Mr. Sabbath?</p> <p>16:53:03 9 A. Uh-huh.</p> <p>16:53:07 10 Q. I take it that in contacting Mr. Swartz,</p> <p>16:53:12 11 you're working on the assumption that you had the right</p> <p>16:53:14 12 to enforce UNIX copyrights. Is that a fair statement?</p> <p>16:53:17 13 MR. JACOBS: Objection. Leading.</p> <p>16:53:19 14 THE WITNESS: Oh, certainly.</p> <p>16:53:20 15 Q. BY MR. NORMAND: Was there ever a time at</p> <p>16:53:30 16 your tenure at Santa Cruz when you believe you did not,</p> <p>16:53:33 17 meaning Santa Cruz, own the UNIX or UnixWare copyrights?</p> <p>16:53:36 18 A. I don't recall such a time.</p> <p>16:53:38 19 Q. Do you recall anyone at Santa Cruz suggesting</p> <p>16:53:40 20 to you that Santa Cruz did not own the UNIX or UnixWare</p> <p>16:53:44 21 copyrights during your tenure there?</p> <p>16:53:46 22 A. I don't recall that.</p> <p>16:53:47 23 Q. Can you recall anyone from Novell suggesting</p> <p>16:53:49 24 to you that Santa Cruz didn't own the UNIX or UnixWare</p> <p>16:53:53 25 copyrights during your tenure at Santa Cruz?</p>	<p>16:55:24 1 code?</p> <p>16:55:24 2 MR. JACOBS: Objection. Leading.</p> <p>16:55:26 3 THE WITNESS: You know, I'm not technical</p> <p>16:55:28 4 enough to know if that's the case. I think, but I don't</p> <p>16:55:31 5 know.</p> <p>16:55:31 6 Q. BY MR. NORMAND: Would that statement be true</p> <p>16:55:34 7 if SVRX source code was part of UNIX and UnixWare source</p> <p>16:55:37 8 code?</p> <p>16:55:37 9 A. If that were the case, then it's probably so</p> <p>16:55:40 10 that we would have to modify, reproduce, so forth, the</p> <p>16:55:45 11 SVRX code as well.</p> <p>16:55:45 12 Q. Is it your view that under the Asset Purchase</p> <p>16:55:50 13 Agreement, Santa Cruz licensed from Novell the UNIX and</p> <p>16:55:52 14 UnixWare source code?</p> <p>16:55:54 15 A. No. I mean, the purpose of the Asset</p> <p>16:55:58 16 Purchase Agreement was that we would acquire, we would</p> <p>16:56:01 17 buy and own all of the UNIX business, all of the UNIX</p> <p>16:56:05 18 technology. We were already a licensee.</p> <p>16:56:09 19 MR. JACOBS: Objection. Move to strike.</p> <p>16:56:11 20 Q. BY MR. NORMAND: Mr. Jacobs asked you earlier</p> <p>16:56:13 21 about paragraph A of Amendment Number 2, and he used the</p> <p>16:56:16 22 phrase "nunc pro tunc."</p> <p>16:56:18 23 Do you remember that?</p> <p>16:56:19 24 A. Vaguely.</p> <p>16:56:20 25 Q. "Nunc pro tunc" is Latin for "now for then"?</p>
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<p>16:53:56 1 A. I don't recall that.</p> <p>16:54:07 2 Q. If you look at Amendment Number 2, the</p> <p>16:54:10 3 language in paragraph A, you've spoken now with both me</p> <p>16:54:16 4 and Mr. Jacobs regarding this language copyrighted is a</p> <p>16:54:22 5 trademark owned by Novell at the date of the agreement</p> <p>16:54:24 6 required from SCO to exercise its rights with respect to</p> <p>16:54:27 7 the acquisition of UNIX and UnixWare technologies.</p> <p>16:54:30 8 Now, did you have any understanding at the</p> <p>16:54:31 9 time as to whether SVRX source code was part of UNIX and</p> <p>16:54:37 10 UnixWare?</p> <p>16:54:38 11 A. There was an assumption that SVRX was part of</p> <p>16:54:41 12 UNIX, sure. UNIX would have been, you know, all</p> <p>16:54:46 13 releases, all forms of the UNIX operating system.</p> <p>16:54:49 14 Q. Was it your understanding under the APA that</p> <p>16:54:52 15 Santa Cruz had the right to develop the UnixWare</p> <p>16:54:54 16 business?</p> <p>16:54:54 17 A. Well, certainly that was the primary intent.</p> <p>16:54:59 18 Q. Was it your understanding at the time of the</p> <p>16:55:02 19 execution of the APA that in order to develop the</p> <p>16:55:05 20 UnixWare business, Santa Cruz would have to copy and</p> <p>16:55:08 21 reproduce UnixWare source code?</p> <p>16:55:10 22 A. Sure. And modify it, certainly.</p> <p>16:55:12 23 Q. Does it follow that in order to develop the</p> <p>16:55:16 24 UnixWare business, it was your understanding that Santa</p> <p>16:55:19 25 Cruz would need to copy and reproduce the SVRX source</p>	<p>16:56:25 1 A. Uh-huh.</p> <p>16:56:25 2 Q. Did you understand paragraph A of the</p> <p>16:56:28 3 Amendment 2 to amend the excluded asset schedule of the</p> <p>16:56:32 4 APA?</p> <p>16:56:33 5 A. No, I took this as a clarification, not</p> <p>16:56:36 6 actually an amendment. And whether it was effective way</p> <p>16:56:42 7 back when, or 16 October, '96, to be honest with you, I</p> <p>16:56:46 8 failed to see any significance. But maybe I'm missing</p> <p>16:56:50 9 some fine point that is a contention between you two.</p> <p>16:56:56 10 Q. Well, to the extent paragraph A clarifies a</p> <p>16:57:00 11 schedule to the APA --</p> <p>16:57:02 12 A. Uh-huh.</p> <p>16:57:02 13 Q. -- is it fair to say that Amendment Number 2,</p> <p>16:57:05 14 paragraph A, was effective as of the execution of the</p> <p>16:57:08 15 APA?</p> <p>16:57:08 16 MR. JACOBS: Objection. Leading.</p> <p>16:57:10 17 THE WITNESS: And I can only say I suppose</p> <p>16:57:15 18 so.</p> <p>16:57:15 19 Q. BY MR. NORMAND: And why is that?</p> <p>16:57:17 20 A. Because I don't really speak very good Latin.</p> <p>16:57:27 21 No, what I meant is I don't understand the</p> <p>16:57:29 22 rules pertaining to that legal principle.</p> <p>16:57:32 23 Q. There is language in paragraph A of Amendment</p> <p>16:57:35 24 Number 2 that says "With respect to Schedule 1.1(d) of</p> <p>16:57:39 25 the agreement, titled 'Excluded Assets,' Section 5,</p>

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<p>16:57:42 1 subsection A shall be revised to read."</p> <p>16:57:45 2 Do you see that language?</p> <p>16:57:46 3 A. Yes, I do.</p> <p>16:57:48 4 Q. To the extent that the excluded asset</p> <p>16:57:51 5 schedule of Amendment A was revised, does that affect</p> <p>16:57:54 6 your view one way or the other as to whether copyrights</p> <p>16:57:57 7 were deemed transferred under this Amendment Number 2 as</p> <p>16:58:03 8 of the time of the APA?</p> <p>16:58:04 9 A. No. I mean, you know, again, I was told --</p> <p>16:58:07 10 we understood this to be a clarification, not a revision.</p> <p>16:58:25 11 Q. Mr. Jacobs asked you about Scott Lester's</p> <p>16:58:28 12 involvement in certain negotiations --</p> <p>16:58:30 13 A. Yeah.</p> <p>16:58:30 14 Q. -- under the APA. Do you recall that</p> <p>16:58:32 15 question?</p> <p>16:58:32 16 A. Yes.</p> <p>16:58:33 17 Q. Was Mr. Lester part of any negotiations in</p> <p>16:58:38 18 which outside counsel for the other side was not</p> <p>16:58:42 19 involved?</p> <p>16:58:44 20 A. I suspect not. Nor do I think Ed Leonard was</p> <p>16:58:50 21 probably meeting with the other side without their</p> <p>16:58:53 22 outside counsel.</p> <p>16:59:37 23 Q. I wanted to direct your attention to</p> <p>16:59:39 24 Exhibit 46, which was one of the email chains.</p> <p>16:59:43 25 A. Okay. Got it.</p>	<p>17:02:34 1 of SCO that the execution of the amendment by Novell</p> <p>17:02:38 2 constitutes a breach of the Asset Purchase Agreement and</p> <p>17:02:40 3 represents an invalid exercise of Novell's authority.</p> <p>17:02:44 4 The amendment purports to grant certain rights to IBM and</p> <p>17:02:48 5 to modify preexisting license agreements in a manner that</p> <p>17:02:53 6 contravenes the provisions of the asset purchase</p> <p>17:02:54 7 agreement and potentially causes substantial harm and</p> <p>17:02:57 8 damages to SCO."</p> <p>17:02:58 9 Do you see that language?</p> <p>17:02:59 10 A. Yes, I do.</p> <p>17:03:00 11 Q. Is it your view that in writing this letter,</p> <p>17:03:03 12 Mr. Lester meant to refer only to Section 4.16(c) of the</p> <p>17:03:08 13 APA?</p> <p>17:03:08 14 MR. JACOBS: Objection. Calls for</p> <p>17:03:10 15 speculation, lacks foundation.</p> <p>17:03:13 16 THE WITNESS: And I have no idea.</p> <p>17:03:22 17 Q. BY MR. NORMAND: Do you recall you had a</p> <p>17:03:23 18 series of questions and answers with Mr. Jacobs regarding</p> <p>17:03:29 19 Novell's rights to enter into buyouts on behalf of Santa</p> <p>17:03:32 20 Cruz in 1996? Do you recall those questions and answers?</p> <p>17:03:35 21 A. Vaguely.</p> <p>17:03:36 22 Q. And do you recall my asking you this morning</p> <p>17:03:41 23 about Amendment Number X?</p> <p>17:03:43 24 A. What about Amendment Number X?</p> <p>17:03:47 25 Q. Do you recall me asking you questions about</p>
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<p>17:00:15 1 Q. Do you see on the first page of the document</p> <p>17:00:20 2 in the email to John Maciaszek from Scott McGregor</p> <p>17:00:29 3 beginning, "John, Alok and I spoke about this, and here's</p> <p>17:00:34 4 the status"? First page of the document?</p> <p>17:00:40 5 A. Oh. Okay. Yeah.</p> <p>17:00:42 6 Q. And the language says: Alok spoke with</p> <p>17:00:45 7 Frankenberg last Friday, and Novell thinks they have the</p> <p>17:00:49 8 right to do this. On the other hand, Geoff Seabrook, who</p> <p>17:00:53 9 negotiated the deal from our end, is adamant that they</p> <p>17:00:57 10 don't or at least the intent is that they don't."</p> <p>17:00:57 11 Do you see that language?</p> <p>17:00:59 12 A. I do.</p> <p>17:01:00 13 Q. Do you know whether Mr. Seabrook was relying</p> <p>17:01:03 14 on Section 4.16(c) in reaching the conclusion that's</p> <p>17:01:06 15 attributed to him here?</p> <p>17:01:08 16 A. I have no idea. You know, when I saw this</p> <p>17:01:11 17 email thread today, I had no recollection whatsoever of</p> <p>17:01:18 18 it.</p> <p>17:02:03 19 Q. I'm handing you, Mr. Sabbath, what's been</p> <p>17:02:06 20 marked as Exhibit 1050, a letter dated May 1st, 1996</p> <p>17:02:14 21 under Brobeck, Phleger &amp; Harrison letterhead to Novell,</p> <p>17:02:19 22 attention David Bradford, signed by Scott Lester?</p> <p>17:02:23 23 A. Yes.</p> <p>17:02:25 24 Q. In which Mr. Lester states in the first page,</p> <p>17:02:30 25 paragraph 3: "This letter constitutes notice on behalf</p>	<p>17:03:51 1 it?</p> <p>17:03:51 2 A. Oh, sure. Sure.</p> <p>17:03:52 3 Q. Is it your view that following the execution</p> <p>17:03:56 4 of Amendment Number X, Novell was entitled to enter into</p> <p>17:04:00 5 buyouts unilaterally on behalf of Santa Cruz?</p> <p>17:04:02 6 MR. JACOBS: Object to the form of the</p> <p>17:04:04 7 question.</p> <p>17:04:04 8 THE WITNESS: Well, Amendment Number X was</p> <p>17:04:07 9 the three-way between IBM, Novell, and SCO. There was</p> <p>17:04:12 10 another amendment -- well, Amendment Number 2,</p> <p>17:04:16 11 actually --</p> <p>17:04:17 12 Q. BY MR. NORMAND: It's really more a question</p> <p>17:04:19 13 to time. Amendment Number 2 and Amendment Number X.</p> <p>17:04:24 14 following the execution of those documents, do you have a</p> <p>17:04:27 15 view as to whether Novell was entitled to enter into</p> <p>17:04:30 16 buyouts unilaterally for Santa Cruz?</p> <p>17:04:32 17 A. I do have a view. I think that really nailed</p> <p>17:04:35 18 down the clarification that Novell would not have the</p> <p>17:04:38 19 ability to do a buyout on our behalf or on anybody's</p> <p>17:04:41 20 behalf.</p> <p>17:05:34 21 Q. Do you have any understanding, Mr. Sabbath,</p> <p>17:05:36 22 as to whether following the execution of the APA, Santa</p> <p>17:05:41 23 Cruz had occasion to enter into UnixWare licenses in</p> <p>17:05:45 24 which it licensed SVRX source code to a third party?</p> <p>17:05:49 25 MR. JACOBS: Objection. Asked and answered.</p>

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<p>17:05:50 1 THE WITNESS: I don't know.</p> <p>17:06:04 2 Q. BY MR. NORMAND: Mr. Jacobs directed you to</p> <p>17:06:05 3 Section 2.10 of the Asset Purchase Agreement.</p> <p>17:06:13 4 A. 2.10 of technology?</p> <p>17:06:18 5 Q. Correct. And that's the section in which</p> <p>17:06:22 6 Novell as the seller makes certain representations</p> <p>17:06:26 7 regarding a list of seller intellectual property rights?</p> <p>17:06:30 8 A. Yes.</p> <p>17:06:31 9 Q. Now, do you have any explanation as to why</p> <p>17:06:36 10 copyrights would have been included in those seller</p> <p>17:06:39 11 intellectual property rights, and representations would</p> <p>17:06:41 12 have been made about such copyrights in Section 2.10 if</p> <p>17:06:46 13 Novell were not transferring those copyrights?</p> <p>17:06:49 14 A. No, I don't know why it would be there if</p> <p>17:06:53 15 that were not the case.</p> <p>17:07:02 16 Q. Do you have any reason to believe that you</p> <p>17:07:05 17 ever told Allison Lisbonne or Allison Amadia that UNIX or</p> <p>17:07:09 18 UnixWare copyrights had not been transferred under the</p> <p>17:07:13 19 APA?</p> <p>17:07:13 20 A. I sure don't recall that.</p> <p>17:07:15 21 Q. Do you have any reason to believe you would</p> <p>17:07:17 22 have made such a statement?</p> <p>17:07:17 23 A. Well, I mean, it could be that she brought it</p> <p>17:07:20 24 up or -- I mean, not me, but her. I don't recall that.</p> <p>17:07:25 25 It could be somebody brought up the fact that maybe there</p>	<p>17:09:12 1 Q. If you look at Schedule 1.1(a) of the APA.</p> <p>17:09:17 2 That's the Bates number ending 950?</p> <p>17:09:19 3 A. Okay.</p> <p>17:09:29 4 Q. Paragraph 1, among the assets transferred was</p> <p>17:09:32 5 the UNIX and UnixWare source code; correct?</p> <p>17:09:35 6 A. Right. Right.</p> <p>17:09:48 7 Q. And if you see at the top of the Amendment</p> <p>17:09:50 8 Number 2, the phrase "licensed technology"?</p> <p>17:09:54 9 A. I'm sorry, where is that?</p> <p>17:09:55 10 Q. At the top of page 2 of Amendment Number 2?</p> <p>17:09:58 11 A. Other technology? Yes.</p> <p>17:10:01 12 Q. I'm sorry, licensed technology.</p> <p>17:10:04 13 A. Like what page of the footer on the bottom</p> <p>17:10:09 14 right?</p> <p>17:10:09 15 Q. The top of page 2 of the Technology License</p> <p>17:10:12 16 Agreement?</p> <p>17:10:12 17 A. Oh, I'm looking at the wrong agreement.</p> <p>17:10:23 18 License technology, right.</p> <p>17:10:26 19 Q. And if you look in paragraph Roman Numeral II</p> <p>17:10:30 20 A 2 of the Technology License Agreement?</p> <p>17:10:35 21 A. Subject to paragraphs B and C of this</p> <p>17:10:39 22 Section 2?</p> <p>17:10:40 23 Q. Novell was given with the consent of SCO a</p> <p>17:10:42 24 non-exclusive, non-terminable, worldwide fee-free license</p> <p>17:10:46 25 to use, reproduce, and modify and authorize its customers</p>
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<p>17:07:28 1 needed to be a clarification on the language in the APA.</p> <p>17:07:32 2 I don't recall that.</p> <p>17:07:38 3 Q. Was it ever your understanding after the</p> <p>17:07:40 4 execution of the APA that Novell had retained UNIX or</p> <p>17:07:43 5 UnixWare copyrights?</p> <p>17:07:44 6 A. No.</p> <p>17:07:57 7 Q. Mr. Jacobs pointed you in the technology</p> <p>17:08:00 8 license agreement to the top of page 2 --</p> <p>17:08:04 9 A. Top of page 2.</p> <p>17:08:09 10 Q. -- which certain definitions in the APA are</p> <p>17:08:12 11 incorporated.</p> <p>17:08:13 12 A. Yes.</p> <p>17:08:13 13 Q. And including the word "assets"?</p> <p>17:08:17 14 A. Okay. I see assets.</p> <p>17:08:21 15 Q. I take it from our discussion this morning</p> <p>17:08:40 16 that it was your understanding that the UNIX and UnixWare</p> <p>17:08:48 17 licenses were among the assets transferred, is that fair</p> <p>17:08:52 18 to say, under the APA?</p> <p>17:08:53 19 A. The licenses, what licenses specifically?</p> <p>17:08:57 20 Q. That UNIX and UnixWare licenses were among</p> <p>17:09:01 21 the assets transferred under the APA?</p> <p>17:09:03 22 A. You mean the licenses that Novell had entered</p> <p>17:09:06 23 into with its customers?</p> <p>17:09:08 24 Q. Correct.</p> <p>17:09:08 25 A. Yes, of course.</p>	<p>17:10:52 1 to use, reproduce, and modify licensed technology."</p> <p>17:10:56 2 Do you see that?</p> <p>17:10:56 3 A. I do.</p> <p>17:10:57 4 Q. Did you understand such licensed technology</p> <p>17:11:00 5 to include the UNIX and UnixWare source code?</p> <p>17:11:05 6 A. No.</p> <p>17:11:12 7 Q. Well, let's look at the definition of</p> <p>17:11:14 8 licensed technology in the APA.</p> <p>17:11:17 9 MR. JACOBS: 1.6.</p> <p>17:11:22 10 MR. NORMAND: I'm sorry?</p> <p>17:11:23 11 MR. JACOBS: 1.6.</p> <p>17:11:36 12 Q. BY MR. NORMAND: If you look at Section 1.6</p> <p>17:11:39 13 of the APA, Mr. Sabbath.</p> <p>17:11:40 14 A. I'm sorry, Section 1.6? License back of</p> <p>17:11:52 15 assets, okay.</p> <p>17:11:53 16 Q. It says: "Concurrent with the closing, buyer</p> <p>17:11:56 17 shall execute a license agreement under which it shall</p> <p>17:11:58 18 grant the seller a royalty-free perpetual worldwide</p> <p>17:12:02 19 license to all of the technology included in the assets."</p> <p>17:12:05 20 A. Uh-huh.</p> <p>17:12:06 21 Q. Do you remember we looked at the definition</p> <p>17:12:08 22 of "assets"?</p> <p>17:12:09 23 A. Uh-huh.</p> <p>17:12:09 24 Q. It is your understanding that UNIX and</p> <p>17:12:11 25 UnixWare source code were among the assets?</p>

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## **EXHIBIT 14**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff/Counterclaim defendant,

vs.

CASE NO. 2:04CV00139

NOVELL, INC.,

Defendants/Counterclaim-Plaintiff

DEPOSITION OF KIM MADSEN

Februrary 13, 2007

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REPORTED BY

LAWRENCE PAUL NELSON, CSR 12144

JOB NO 191725

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1	Q. Including UNIX copyrights; correct?	10:33:13	1	Operation at the time of the Novell-Santa Cruz deal	10:36:42
2	A. Including the UNIX copyrights.	10:33:16	2	had been sold off to other entities?	10:36:45
3	Q. And that particular paragraph Santa Cruz	10:33:18	3	MR. NORMAND: Objection to form.	10:36:49
4	did not claim to own UNIX copyrights; correct?	10:33:22	4	THE WITNESS: I don't know the particulars	10:36:53
5	MR. NORMAND: Objection to form, asked and	10:33:26	5	of the transaction with Sun, so I can't answer that	10:36:54
6	answered.	10:33:29	6	question.	10:36:59
7	THE WITNESS: Yes.	10:33:29	7	BY MR. BRAKEBILL:	10:37:04
8	BY MR. BRAKEBILL:	10:33:37	8	Q. As you sit here today do you have any	10:37:05
9	Q. Yes, they did not claim to own the UNIX	10:33:37	9	understanding as to whether or not any Tarantella	10:37:06
10	copyrights?	10:33:40	10	business was not purchased by Sun Microsystems in	10:37:08
11	A. That's correct.	10:33:41	11	2005?	10:37:13
12	Q. Do you know when this Santa Cruz-Caldera	10:33:43	12	A. No, I have no understanding of that.	10:37:13
13	deal closed?	10:33:49	13	Q. Did Mr. Sabbath stay at Tarantella after	10:37:17
14	MR. NORMAND: Objection to form.	10:33:56	14	the Santa Cruz-Caldera transaction?	10:37:22
15	BY MR. BRAKEBILL:	10:33:57	15	A. Yes.	10:37:24
16	Q. Approximately.	10:33:58	16	Q. Do you know how long he stayed at	10:37:24
17	A. I do not recall when it closed, sometime	10:34:07	17	Tarantella?	10:37:27
18	late in 2003, I believe.	10:34:17	18	A. He stayed until December of 2003, I	10:37:37
19	Q. I'll represent for the record, and Ted,	10:34:18	19	believe.	10:37:37
20	correct me if need be, but I'll represent for the	10:34:21	20	Q. Do you know what he did upon his departure	10:37:42
21	record that it closed in 2001.	10:34:24	21	from Tarantella?	10:37:44
22	A. I'm sorry. What did I just say?	10:34:27	22	A. I believe he's happily retired.	10:37:48
23	Q. 2003.	10:34:28	23	Q. Now, you were involved in 2001 in	10:37:55
24	A. Oh, I'm sorry.	10:34:30	24	corresponding with IBM concerning the Caldera	10:38:41
25	Q. Just in case it impacts the time frame for	10:34:31	25	acquisition of Santa Cruz assets; is that right?	10:38:47
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1	questions.	10:34:34	1	MR. NORMAND: Objection to form,	10:38:51
2	A. Yes, yes.	10:34:34	2	foundation.	10:38:52
3	Q. Does that sound correct to you that the	10:34:35	3	THE WITNESS: I don't know.	10:38:58
4	transaction closed in approximately 2001?	10:34:37	4	BY MR. BRAKEBILL:	10:39:09
5	A. Yeah, February or March, I believe, now	10:34:42	5	Q. As you sit here today you don't recall one	10:39:09
6	that I think about it.	10:34:46	6	way or another whether you were involved in	10:39:10
7	Q. Did you stay with Santa Cruz after the	10:34:54	7	correspondence with IBM in 2001 concerning Caldera's	10:39:13
8	Santa Cruz-Caldera transaction closed?	10:34:59	8	acquisition of Santa Cruz assets?	10:39:20
9	A. Yes.	10:35:01	9	A. I believe that I sent a letter to them. I	10:39:23
10	Q. And on or around the closing of the Santa	10:35:09	10	may have had phone conversations. I don't remember	10:39:28
11	Cruz-Caldera transaction in 2001 did the remaining	10:35:15	11	the particulars.	10:39:32
12	business become Tarantella?	10:35:20	12	MR. BRAKEBILL: Are you going to want to	10:40:48
13	A. Yes.	10:35:26	13	take a break soon? I can keep going. This is a	10:40:50
14	Q. And so you stayed in Tarantella's legal	10:35:27	14	convenient spot. Do you want to keep going?	10:40:53
15	department beginning in March or so of 2001?	10:35:34	15	THE WITNESS: Yeah, I can go a little	10:40:56
16	A. Yes.	10:35:36	16	longer.	10:40:58
17	Q. And then you stayed in Tarantella's legal	10:35:38	17	MR. BRAKEBILL: All right.	10:40:59
18	department until approximately August of 2004?	10:35:42	18	BY MR. BRAKEBILL:	10:41:02
19	A. Yes.	10:35:46	19	Q. Did you have a role in the negotiation of	10:41:17
20	Q. Are you aware that in 2005 Tarantella was	10:35:56	20	the asset purchase agreement between Novell and	10:41:22
21	purchased by Sun Microsystems?	10:36:01	21	Santa Cruz in 1995?	10:41:25
22	A. Yes.	10:36:03	22	A. Yes.	10:41:27
23	Q. So is it fair to say that at the time of	10:36:04	23	Q. Well, how would you characterize that role	10:41:28
24	the Sun purchase of Tarantella in 2005 that all of	10:36:31	24	as you sit here today?	10:41:34
25	the assets comprising the original Santa Cruz	10:36:38	25	A. I participated in meetings, negotiations,	10:41:36

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1	a review of the asset purchase agreement, and	10:41:43	1	prior to the execution of the asset purchase	10:45:16
2	possibly preparation of some of the schedules.	10:41:50	2	agreement?	10:45:18
3	Q. Who was part of the legal team, in-house	10:42:07	3	A. I can't be certain of who -- there are	10:45:27
4	legal team at Santa Cruz participating in the	10:42:10	4	names that are familiar to me but I can't be certain	10:45:32
5	negotiation of the APA?	10:42:15	5	who came to Santa Cruz and who didn't. Ed is the	10:45:35
6	A. Primarily Steve Sabbath and myself.	10:42:17	6	person who sticks out most clearly in my mind.	10:45:38
7	Q. I take it Steve Sabbath was the lead	10:42:22	7	Q. You reference, if you will, two sets of	10:45:42
8	in-house lawyer for Santa Cruz on the APA	10:42:26	8	meetings, some meetings in Santa Cruz that you had	10:45:46
9	transaction?	10:42:29	9	with Novell and some meetings that you had with	10:45:48
10	A. Yes, I believe he was the only lawyer at	10:42:31	10	Novell in New Jersey. Is that fair?	10:45:51
11	the Santa Cruz Operation at that time.	10:42:34	11	A. Yes.	10:45:53
12	Q. Now, you mentioned that you believe you	10:42:47	12	Q. Did you have any meetings with Novell	10:45:54
13	were part of meetings concerning the asset purchase	10:42:50	13	aside from those in Santa Cruz and those in New	10:45:56
14	agreement. What meetings in particular do you have	10:42:54	14	Jersey?	10:45:59
15	in mind?	10:42:57	15	A. Yes. While we were getting the asset	10:45:59
16	A. We had internal meetings with Geoff	10:42:59	16	purchase agreement we had several meetings at -- I	10:46:03
17	Seabrook and Jim Wilt, who were the lead business	10:43:07	17	believe most of the meetings were at the Brobeck law	10:46:11
18	negotiators as well as meetings with Doug Michaels	10:43:13	18	firm and they might have been at Wilson Sonsini's	10:46:15
19	and Aluc Mohan, as well as meetings with Novell. Ed	10:43:20	19	facilities, but we had several meetings at the	10:46:21
20	Chatlos I remember in particular meetings with Ed.	10:43:27	20	lawyers who were representing the two parties.	10:46:25
21	Q. As you sit here today what specific	10:43:31	21	Q. Let's talk about the Santa Cruz meetings	10:46:29
22	meetings do you recall having with Novell prior to	10:43:34	22	with Novell first. Is it fair to say you don't	10:46:33
23	the execution of the asset purchase agreement on	10:43:36	23	recall anyone in particular from Novell that was	10:46:36
24	September 19th, 1995?	10:43:40	24	part of those meetings aside from Ed Chatlos?	10:46:38
25	MR. NORMAND: Objection to form, calls for	10:43:43	25	A. I don't remember anything in particular.	10:46:42
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1	a narrative.	10:43:48	1	I remember there were other people from Novell but I	10:46:45
2	THE WITNESS: I'm sorry. Can you repeat	10:43:48	2	couldn't say with certainty as to who they were.	10:46:49
3	the question?	10:43:49	3	Q. Do you recall when these meeting took	10:46:52
4	BY MR. BRAKEBILL:	10:43:50	4	place in Santa Cruz?	10:46:54
5	Q. You said you recall having meetings with	10:43:50	5	A. No, I can't recall the dates.	10:47:00
6	Novell prior to the execution of the asset purchase	10:43:52	6	Q. Do you recall that those meetings were	10:47:04
7	agreement?	10:43:56	7	prior to the execution of the original asset	10:47:07
8	A. Yes.	10:43:57	8	purchase agreement?	10:47:10
9	MR. NORMAND: Are you transcribing these	10:43:58	9	A. Yes.	10:47:11
10	objections or do I need to speak louder?	10:43:58	10	Q. You also mentioned some meetings in New	10:47:13
11	THE COURT REPORTER: No, I'm getting it.	10:43:58	11	Jersey with Novell? I believe you said you and	10:47:17
12	MR. NORMAND: Okay.	10:44:11	12	Steve Sabbath went to New Jersey?	10:47:20
13	BY MR. BRAKEBILL:	10:44:11	13	A. Yes.	10:47:22
14	Q. When's the first meeting that you recall	10:44:12	14	Q. How many meetings do you recall having	10:47:22
15	having with Novell prior to the execution of the	10:44:14	15	with people from Novell in New Jersey prior to the	10:47:25
16	asset purchase agreement?	10:44:17	16	execution of the asset purchase agreement?	10:47:28
17	A. I don't remember the dates. I remember Ed	10:44:22	17	A. There were numerous meetings over a couple	10:47:35
18	Chatlos, and there may have been other employees	10:44:30	18	days, a few days.	10:47:42
19	from Novell that accompanied him coming to Santa	10:44:33	19	Q. Who do you recall meeting with from	10:47:44
20	Cruz and having meetings in Santa Cruz as well as	10:44:38	20	Novell?	10:47:46
21	Steve and myself going to New Jersey on a couple of	10:44:42	21	A. I primarily remember meeting with Ed	10:47:48
22	occasions and meeting to discuss the transaction,	10:44:48	22	Chatlos. Burt Levine may have been involved in	10:47:59
23	the contemplated transaction.	10:44:52	23	meetings. Ty Mattingly may have been involved in	10:48:03
24	Q. Aside from Ed Chatlos, who from Novell do	10:45:02	24	meetings. I remember speaking with him on the phone	10:48:10
25	you recall meeting with from Novell in Santa Cruz	10:45:07	25	but I can't be certain whether or not he was	10:48:13

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1	Q. Why don't you turn to Exhibit 51, which is	11:56:28	1	point to in the absence of reading the agreement	11:59:49
2	your declaration, and I'll ask you to look at	11:56:31	2	afresh, yes.	11:59:53
3	whatever you feel comfortable to look at, but I	11:56:47	3	BY MR. BRAKEBILL:	11:59:56
4	believe that paragraphs 8 -- 8 through 12 relate to	11:56:50	4	Q. And how, if at all, do you believe that	12:00:07
5	your beliefs concerning UNIX ownership.	11:57:03	5	recital A and section 1.1(a) of the asset purchase	12:00:09
6	A. Yes.	11:57:08	6	agreement --	12:00:14
7	MR. NORMAND: Objection to form.	11:57:09	7	A. And schedule 1.1(a), which is referenced	12:00:15
8	BY MR. BRAKEBILL:	11:57:16	8	in section 1.1(a).	12:00:20
9	Q. Is it a fair statement that -- well, let	11:57:17	9	Q. How do you believe that recital A, section	12:00:23
10	me ask it this way. What, if any, other provisions	11:57:21	10	1.1(a), and schedule 1.1(a) influenced your personal	12:00:27
11	in the asset purchase agreement did you rely upon in	11:57:25	11	belief that UNIX copyrights did transfer from Novell	12:00:34
12	your belief in this declaration that UNIX copyrights	11:57:27	12	to Santa Cruz?	12:00:44
13	did transfer from Novell to Santa Cruz?	11:57:30	13	A. Because all right, title, and interest --	12:00:44
14	A. I don't know. I don't remember which	11:57:39	14	let me get the language here, in and to the assets	12:00:48
15	specific provisions. And I'd be happy to take the	11:57:41	15	relating to the business, which is UNIX and	12:00:52
16	time to review this document if you want me to do	11:57:46	16	UnixWare, were being conveyed to SCO. And included	12:00:58
17	that.	11:57:50	17	in that would have, of course, been the copyrights.	12:01:03
18	Q. I'll give you the opportunity in due	11:57:53	18	Q. And did you understand that in section	12:01:07
19	course. I'm trying to test your memory aside from	11:57:56	19	1.1(a) of the asset purchase agreement that -- I'll	12:01:10
20	having the document in front of you right now. You	11:57:59	20	refer you to the last sentence, that notwithstanding	12:01:16
21	gave the declaration on UNIX ownership two months	11:58:02	21	schedule 1.1(a) the assets to be so purchased shall	12:01:21
22	ago; is that right?	11:58:06	22	not include the assets set forth on the schedule	12:01:24
23	MR. NORMAND: Asked and answered.	11:58:08	23	1.1(b)?	12:01:28
24	THE WITNESS: November 4th.	11:58:10	24	MR. NORMAND: Objection to form.	12:01:29
25	BY MR. BRAKEBILL:	11:58:11	25	THE WITNESS: Yes.	12:01:30

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1	Q. In the last two to three months you gave a	11:58:11	1	BY MR. BRAKEBILL:	12:01:31
2	declaration in which it was your personal belief	11:58:14	2	Q. And notwithstanding the excluded assets	12:01:32
3	that UNIX copyrights did transfer from Novell to	11:58:17	3	provision from section 1.1(a), is it still your	12:01:36
4	Santa Cruz as part of is the asset purchase	11:58:21	4	personal belief that the UNIX copyrights did	12:01:40
5	agreement; correct?	11:58:23	5	transfer?	12:01:42
6	A. Correct.	11:58:24	6	A. Yes.	12:01:43
7	Q. And what provisions, if any, were you	11:58:24	7	Q. From Novell to Santa Cruz?	12:01:44
8	relying upon for your personal belief that the UNIX	11:58:28	8	A. Yes.	12:01:46
9	copyrights did transfer?	11:58:31	9	Q. And why is that?	12:01:46
10	A. Well, I relied on the description of the	11:58:33	10	MR. NORMAND: Objection to form, asked and	12:01:55
11	business in 1.1(a) and the recital A. I don't	11:58:39	11	answered.	12:01:58
12	recall which other provisions I may have relied on,	11:58:48	12	THE WITNESS: Because it's clear --	12:01:58
13	but I also relied on my recollection of the	11:58:54	13	BY MR. BRAKEBILL:	12:01:58
14	transaction and the negotiations surrounding the	11:58:59	14	Q. Let me put it this way. Aside from	12:02:02
15	transaction, the conversations with Novell as to	11:59:03	15	recital A --	12:02:06
16	what they were conveying and the internal	11:59:06	16	A. Yes.	12:02:06
17	conversations as to what we believed we were buying.	11:59:09	17	Q. -- aside from section 1.1(a) in schedule	12:02:07
18	Q. So to make sure that I understand your	11:59:16	18	1.1(a), is there any other reason for why you	12:02:11
19	testimony, the provisions that you right now can	11:59:19	19	believe that the assets to be so purchased shall not	12:02:14
20	point to in support of your belief that UNIX	11:59:26	20	include the assets set forth in schedule 1.1(b)?	12:02:16
21	copyrights did transfer from Novell to Santa Cruz	11:59:30	21	A. I didn't understand the question.	12:02:23
22	are recital A in section 1.1(a) of the asset	11:59:33	22	Q. Aside from recital A, aside from section	12:02:24
23	purchase agreement; is that correct?	11:59:39	23	1.1(a), and aside from schedule 1.1(a), is there any	12:02:28
24	MR. NORMAND: Objection to form.	11:59:42	24	other basis for your opinion that schedule 1.1(b)	12:02:36
25	THE WITNESS: The provisions that I can	11:59:46	25	does not operate -- that schedule 1.1(b) does not	12:02:42

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

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<p>1 definition of intellectual property, then that would 12:09:05</p> <p>2 have been excluded. But I believe Novell also, we 12:09:08</p> <p>3 licensed back to them certain rights. 12:09:13</p> <p>4 So I don't know if that fits into your 12:09:17</p> <p>5 definition of conveyance of intellectual property. 12:09:19</p> <p>6 So I'm sorry. I can't answer that. 12:09:22</p> <p>7 BY MR. BRAKEBILL: 12:09:28</p> <p>8 Q. Is it your understanding that the business 12:09:28</p> <p>9 that was being sold was a UNIX business? 12:09:30</p> <p>10 A. Yes. 12:09:32</p> <p>11 Q. And could you turn to attachment D of 12:09:33</p> <p>12 Exhibit 1? It ends in the number on the right-hand 12:09:44</p> <p>13 corner 977. 12:09:50</p> <p>14 A. Uh-huh. 12:10:06</p> <p>15 Q. Do you see that this is a document 12:10:07</p> <p>16 entitled "Seller's Patents and Patent Applications 12:10:10</p> <p>17 Affecting the Business"? 12:10:13</p> <p>18 A. Uh-huh. 12:10:14</p> <p>19 Q. Do you have any understanding as to 12:10:14</p> <p>20 whether these are patents or patent applications 12:10:16</p> <p>21 affecting the UNIX business that was being sold to 12:10:19</p> <p>22 Santa Cruz? 12:10:23</p> <p>23 MR. NORMAND: Objection to form. 12:10:27</p> <p>24 THE WITNESS: Yes, I believe they were. I 12:10:32</p> <p>25 don't have any specific recollection about the 12:10:36</p>	<p>1 representatives where Santa Cruz put the question to 12:12:25</p> <p>2 Novell, "Can you transfer the UNIX copyrights to 12:12:28</p> <p>3 us?" 12:12:33</p> <p>4 MR. NORMAND: Objection to form. 12:12:35</p> <p>5 THE WITNESS: No, I don't recall that. 12:12:42</p> <p>6 BY MR. BRAKEBILL: 12:12:45</p> <p>7 Q. Are you aware of any conversations that 12:13:18</p> <p>8 may have taken place between Santa Cruz 12:13:23</p> <p>9 representatives and Novell representatives where 12:13:25</p> <p>10 anyone from Santa Cruz asked Novell to give them the 12:13:29</p> <p>11 UNIX copyrights as part of this deal? 12:13:37</p> <p>12 MR. NORMAND: Objection to form. 12:13:42</p> <p>13 THE WITNESS: No, I do not recall any 12:13:44</p> <p>14 conversation regarding the copyrights. It was 12:13:47</p> <p>15 assumed that the copyrights came with the business, 12:13:51</p> <p>16 but I do not have any specific recollection about a 12:13:57</p> <p>17 conversation regarding copyrights. 12:14:01</p> <p>18 BY MR. BRAKEBILL: 12:14:03</p> <p>19 Q. So it's fair to say that you were assuming 12:14:03</p> <p>20 that the UNIX copyrights were being transferred? 12:14:05</p> <p>21 MR. NORMAND: Objection to form. 12:14:08</p> <p>22 THE WITNESS: I don't believe that was my 12:14:09</p> <p>23 assumption alone, but yes, I was assuming that. 12:14:11</p> <p>24 BY MR. BRAKEBILL: 12:14:15</p> <p>25 Q. And I take it it's your view that other 12:14:22</p>
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<p>1 individual patents, though. 12:10:39</p> <p>2 BY MR. BRAKEBILL: 12:10:42</p> <p>3 Q. I take it you would agree that none of 12:10:42</p> <p>4 these patents were transferred to Santa Cruz as part 12:10:44</p> <p>5 of the deal? 12:10:48</p> <p>6 MR. NORMAND: Objection to form. 12:10:49</p> <p>7 THE WITNESS: I believe that's correct. 12:10:53</p> <p>8 BY MR. BRAKEBILL: 12:11:25</p> <p>9 Q. Now, in your declaration which is on 12:11:27</p> <p>10 Exhibit 51 -- 12:11:29</p> <p>11 A. Uh-huh. 12:11:30</p> <p>12 Q. -- in paragraph 8 you say, "It was never 12:11:34</p> <p>13 agreed or even discussed that Novell would be 12:11:39</p> <p>14 retaining any copyrights to UNIX." Do you see that? 12:11:42</p> <p>15 A. Yes. 12:11:45</p> <p>16 Q. Again, you didn't have any discussions 12:11:46</p> <p>17 with anyone at Novell where they told you that UNIX 12:11:48</p> <p>18 copyrights were being transferred; correct? 12:11:51</p> <p>19 MR. NORMAND: Objection to form and asked 12:11:54</p> <p>20 and answered. 12:11:58</p> <p>21 THE WITNESS: I don't recall any 12:11:58</p> <p>22 conversations with Novell pertaining to copyrights. 12:12:00</p> <p>23 BY MR. BRAKEBILL: 12:12:17</p> <p>24 Q. Were you part of any conversation between 12:12:17</p> <p>25 Santa Cruz representatives and Novell 12:12:23</p>	<p>1 members of the Santa Cruz negotiating team were 12:14:26</p> <p>2 assuming that the UNIX copyrights were being 12:14:28</p> <p>3 transferred to Santa Cruz; is that correct? 12:14:31</p> <p>4 MR. NORMAND: Objection to form, calls for 12:14:34</p> <p>5 speculation. 12:14:37</p> <p>6 THE WITNESS: I believe it was the 12:14:37</p> <p>7 understanding of SCO and Novell that the copyrights 12:14:38</p> <p>8 would follow with the business. 12:14:41</p> <p>9 BY MR. BRAKEBILL: 12:14:41</p> <p>10 Q. I'm just asking about Santa Cruz right 12:14:44</p> <p>11 now, okay? Is it fair to say that it's your view 12:14:46</p> <p>12 that other members of the Santa Cruz negotiation 12:14:53</p> <p>13 team were assuming that the UNIX copyrights were 12:14:56</p> <p>14 being transferred to Santa Cruz? 12:15:00</p> <p>15 A. Yes, that's my understanding. 12:15:02</p> <p>16 Q. Now, are you aware that Santa Cruz 12:15:20</p> <p>17 before -- -- strike that. 12:15:24</p> <p>18 At the time of the asset purchase agreement 12:15:25</p> <p>19 Santa Cruz had an SVRX license with Novell? 12:15:30</p> <p>20 MR. NORMAND: Objection to form. 12:15:36</p> <p>21 THE WITNESS: No. 12:15:43</p> <p>22 BY MR. BRAKEBILL: 12:15:44</p> <p>23 Q. So is it your understanding that prior to 12:15:48</p> <p>24 the execution of the asset purchase agreement, Santa 12:15:52</p> <p>25 Cruz had no rights relating to UNIX System V? 12:15:56</p>

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1	A. Yes.	15:02:42	1	agreement concerning Novell's sole discretion and	15:06:19
2	Q. Okay. Did you have an understanding at	15:02:43	2	Novell's direction to have Santa Cruz amend,	15:06:21
3	the time preceding the execution of the asset	15:02:58	3	supplement, modify, or waive any rights under or any	15:06:25
4	purchase agreement in September 1995 that there were	15:02:59	4	rights to any SVRX license to the extent so directed	15:06:30
5	restrictions that were being inserted into the asset	15:03:12	5	by Novell?	15:06:36
6	purchase agreement concerning Santa Cruz' rights	15:03:16	6	MR. NORMAND: Object to the form.	15:06:36
7	under SVRX licenses?	15:03:20	7	THE WITNESS: I have a general recollection	15:06:38
8	MR. NORMAND: Objection to form.	15:03:24	8	of that and I see the document in front of me,	15:06:41
9	THE WITNESS: I'm not sure I would use the	15:03:38	9	although this is the draft, so I would need to	15:06:45
10	term "restrictions."	15:03:41	10	compare it to the final to see if that was indeed	15:06:47
11	BY MR. BRAKEBILL:	15:03:44	11	what the APA says.	15:06:51
12	Q. What word would you use?	15:03:44	12	BY MR. BRAKEBILL:	15:06:54
13	A. Novell was retaining a royalty stream	15:03:49	13	Q. Let's refer to Exhibit 1 at page 24, which	15:06:54
14	related to the SVRX binary licenses because the	15:03:55	14	was the Bates page 954 in the lower right-hand	15:07:05
15	Santa Cruz Operation was unable to pay the entire	15:03:59	15	corner.	15:07:10
16	purchase price that Novell was asking, so this was	15:04:05	16	A. Uh-huh.	15:07:10
17	really a payment mechanism.	15:04:08	17	Q. And I'd ask you to look at the second	15:07:10
18	Novell had wanted to convey the binary	15:04:12	18	sentence of section 4.16(b) where it says, and I	15:07:15
19	royalty stream to the SVRX licenses to the Santa	15:04:18	19	quote, "In addition, at seller's sole discretion and	15:07:22
20	Cruz Operation and that was the, you know,	15:04:24	20	direction buyer shall amend, supplement, modify, or	15:07:27
21	original -- that was how the transaction was	15:04:29	21	waive any rights under or shall assign any rights to	15:07:32
22	originally contemplated. But unfortunately, the	15:04:33	22	any SVRX license to the extent so directed in any	15:07:36
23	Santa Cruz Operation just couldn't afford that, so	15:04:36	23	manner or respect by seller."	15:07:42
24	this was used as a mechanism to try and achieve the	15:04:38	24	Do you see that language?	15:07:45
25	purchase price.	15:04:41	25	A. Yes, I see that language.	15:07:46
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1	MR. BRAKEBILL: Move to strike as	15:04:43	1	Q. Does that refresh your recollection that a	15:07:48
2	nonresponsive to the question.	15:04:45	2	provision was inserted into section 4.16 providing	15:07:53
3	BY MR. BRAKEBILL:	15:04:46	3	that Novell's sole discretion and direction Santa	15:07:58
4	Q. Are you aware, Ms. Madsen, that a	15:04:55	4	Cruz need take certain actions as so directed by	15:08:07
5	provision was inserted into section 4.16 providing	15:04:58	5	Novell?	15:08:13
6	that Santa Cruz would not have the authority to	15:05:03	6	MR. NORMAND: Objection to the form.	15:08:14
7	amend, modify, or waive any right or assign any SVRX	15:05:05	7	THE WITNESS: Yes.	15:08:16
8	license without the prior written consent of Novell?	15:05:10	8	BY MR. BRAKEBILL:	15:08:17
9	MR. NORMAND: Object to the form.	15:05:14	9	Q. And following that sentence it says, "In	15:08:34
10	THE WITNESS: I am aware of that.	15:05:19	10	the event that buyer shall fail to take any such	15:08:39
11	BY MR. BRAKEBILL:	15:05:21	11	action concerning the SVRX licenses as required	15:08:43
12	Q. Are you aware, Ms. Madsen, that a	15:05:31	12	therein, seller shall be authorized and is hereby	15:08:47
13	provision was inserted in the provision 4.16	15:05:34	13	granted the rights to take any action on buyer's own	15:08:51
14	concerning Novell's sole discretion and Novell's	15:05:43	14	behalf."	15:08:55
15	direction to have Santa Cruz amend, supplement,	15:05:49	15	Do you see that?	15:08:56
16	modify, or waive any rights under or any rights to	15:05:52	16	A. Yes.	15:08:59
17	any SVRX license to the extent so directed by	15:05:57	17	Q. Does that refresh your recollection that a	15:08:59
18	Novell?	15:06:02	18	provision was inserted into section 4.16 providing	15:09:04
19	MR. NORMAND: Objection to form.	15:06:03	19	that should Santa Cruz fail to take any such action	15:09:10
20	THE WITNESS: I'm sorry. I missed what the	15:06:04	20	concerning SVRX licenses that Novell is authorized	15:09:13
21	question was in that.	15:06:07	21	and granted the right to take any such action on	15:09:18
22	BY MR. BRAKEBILL:	15:06:08	22	Santa Cruz' behalf?	15:09:21
23	Q. I'll repeat the question for you.	15:06:09	23	MR. NORMAND: Objection to form.	15:09:23
24	Are you aware, Ms. Madsen, that there was a	15:06:10	24	THE WITNESS: Yes, I recall that these	15:09:24
25	provision inserted into 4.16 of the asset purchase	15:06:14	25	provisions were inserted to protect Novell's SVRX,	15:09:27

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