

# EXHIBIT 12A

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH - CENTRAL DIVISION  
CASE NO. 2:04 CV 00139

THE SCO GROUP, INC., a Delaware  
corporation,  
Plaintiffs and Counterclaim Defendants,  
vs.  
NOVELL, INC.,  
Defendants and Counterclaim Plaintiffs.



---

VIDEOTAPED DEPOSITION UNDER ORAL EXAMINATION OF  
WILLIAM BRODERICK  
DATE: February 1, 2007  
REPORTED BY: MICHAEL FRIEDMAN, CCR

ESQUIRE DEPOSITION SERVICES  
90 Woodbridge Center Drive  
Suite 340  
Woodbridge, New Jersey 07095  
(732) 283-1060 or (800) 247-8366  
JOB # 642838

W. Broderick

1           Q     Have you had other depositions  
2 taken, Mr. Broderick, other than in the SCO  
3 versus IBM case?

4           A     In my life?

5           Q     Yeah, in your life.

6           A     I was deposed when I was working  
7 for Novell. There was a salesperson, Dan  
8 Caldwell, who was suing Novell for some  
9 commissions, and at the time at Novell that  
10 that happened, I was manager of sales  
11 operations, and I had some activities with  
12 commissions and commission payments, and I  
13 was deposed related to that.

14          Q     Do you recall what year that  
15 was?

16          A     Could be '92.

17          Q     Any other depositions?

18          A     I don't think so.

19          Q     Am I correct there were three  
20 depositions taken of you so far in the IBM  
21 case?

22          A     I believe there were four.

23          Q     You think there's four, okay.

24          A     I'm losing track.

25          Q     I'm new to the case. I don't

W. Broderick

1 want to retread too much. I think -- just  
2 tell me if I'm right on this.

3 I think your chronology, at  
4 least since '91, is that you were at USL from  
5 '91 into '93, and then at Novell from '93 to  
6 '95, and then at Santa Cruz from '95 to '01,  
7 became Caldera, that was '01 to '03, and SCO  
8 from '03 to the present.

9 Do I have that correct?

10 A I believe that's correct. There is  
11 one thing. From August 1, 2002 until  
12 April 1, 2003, I was not a full-time employee  
13 at SCO, but I did contracts work under a  
14 contract with them.

15 Q You were doing the same type  
16 of job responsibilities?

17 A Same work.

18 Q You said in one of your  
19 declarations, in what we will call Exhibit  
20 28, the October 21, 2005 declaration, if you  
21 look at paragraph 4, you said, "Since  
22 December 1991 I've been continuously employed  
23 managing contracts for the successive  
24 companies that have owned the UNIX technology  
25 and business."

W. Broderick

1                   Can you tell me in general  
2 what you mean by 'you've been continuously  
3 employed managing contracts'?

4           A        I was being paid by the companies  
5 to do that.

6           Q        What does that entail?

7           A        I do the work, they pay me.

8           Q        What does the manager  
9 contracts entail?

10          A        Managing contracts, I prepare new  
11 contracts or licenses at the request of some  
12 salespeople, I review contracts, I answer  
13 questions related to existing contracts.

14          Q        What else does -- does that  
15 cover it, you think?

16          A        As a contracts manager, I'm  
17 responsible for knowing the contracts,  
18 answering questions related to the contracts,  
19 whether they come from salespeople, support  
20 people, our customers or licensees.

21                   I prepare new contracts, I assist  
22 in the negotiations of new contracts, I  
23 ensure that they're properly executed when  
24 there are new contracts.

25          Q        Those said responsibilities,

W. Broderick

1 has that been consistent from your time at  
2 USL all the way through SCO?

3 A No. When I first started with USL,  
4 I was manager of sales operations, did not  
5 involve contracts management work. When  
6 Novell had the merger with USL a short time  
7 after we were acquired -- or we merged with  
8 Novell, I was transferred into the contracts  
9 activities.

10 So, it would be sometime -- I think  
11 it was in '92 that that happened. It would  
12 be sometime in '92 that I started doing  
13 contracts work.

14 Q From that point on --

15 A From that point on.

16 Q -- you've been doing the set  
17 of responsibilities that you outlined just  
18 before?

19 A Yes.

20 Q Now, license agreements are  
21 not the only types of contracts you work with  
22 within your contract responsibilities.

23 Right?

24 MR. NORMAND: Objection to form.

25 A Could you define license

W. Broderick

1 one that's more specific to their initially  
2 implementing product, but they're two of our  
3 general support agreements that we have.

4 Q You worked on both of those  
5 types of agreements?

6 A Yes.

7 Q Negotiating them?

8 A No, they really -- they're standard  
9 form agreements, and the only thing we really  
10 do is add customer name, add the product that  
11 we're going to provide support for, add the  
12 contacts and the fees, and here's your  
13 support agreement, sign it.

14 Q In a number of these answers  
15 here on this topic of what kind of agreements  
16 you work with, you've referred to the  
17 company.

18 Do you mean SCO?

19 A Whichever company I worked for at  
20 the time, so at the Santa Cruz operation we  
21 had the engineering, we had the team, we had  
22 the OEM distribution agreement, we had the  
23 source licensing.

24 When we went to Caldera we had the  
25 same agreements. When we changed our name to

W. Broderick

1 SCO we had those same agreements. When I  
2 talk about the company, I thought you were  
3 talking about my history and knowledge of  
4 what I was doing.

5 So when I use company, it's the  
6 company that was paying me at the time.

7 Q Including Novell?

8 A At Novell, my activities were  
9 primarily related in the licensing of the  
10 source code technology. We really didn't  
11 have a package product at the time.

12 Q At least post Novell, so Santa  
13 Cruz, Caldera, SCO, it sounds like you worked  
14 on a wide range of types of contracts.

15 Is that true?

16 MR. NORMAND: Objection to form.

17 A I worked on the types of contracts  
18 that we just discussed.

19 Q What percentage of -- does  
20 that account for almost 100 percent of your  
21 work time over the years?

22 MR. NORMAND: I assume -- you mean  
23 not including Novell?

24 MR. PERNICK: Right.

25 A A hundred percent of my time is



W. Broderick

1 preparing contracts, discussing the contracts  
2 with the sales and support people, answering  
3 questions about the contracts.

4 We'll get questions, what products  
5 are we -- what products is this company  
6 entitled to, what are their discount rates.  
7 I would answer those questions.

8 Most of my time is related to that.  
9 Lately, I've devoted some time to what we're  
10 talking about here today.

11 Q You mean litigation?

12 A Yes.

13 Q How much time over the last  
14 year would you say you spent on the  
15 litigation?

16 MR. NORMAND: I assume you mean to  
17 include the IBM litigation?

18 MR. PERNICK: Yes, IBM and Novell.

19 A As far as how my time is allocated,  
20 it kind of goes in peaks and valleys.  
21 Generally, I probably would be comfortable  
22 with saying 25 percent, maybe 30 percent of  
23 my time. It's a guess. I don't track my  
24 hours.

25 Q You mean, it's a gas? It's a

W. Broderick

1 anything like that that you have in your  
2 office?

3 A No. The agreements were prepared  
4 with review with the corporate attorneys, and  
5 we work with those agreements, and we will  
6 occasionally go through the agreements and  
7 see if they need to be updated for any reason  
8 with -- with in-house legal, and I work with  
9 the agreements.

10 MR. PERNICK: Let's take a break.

11 THE VIDEOGRAPHER: Off the record.

12 10:44.

13 (Brief recess taken from 10:42 to  
14 10:51.)

15 THE VIDEOGRAPHER: Stand by,  
16 please. Back on the record, 10:52.

17 Q Mr. Broderick, could you look  
18 at what we've marked at Exhibit 29, which is  
19 your declaration in the SCO versus IBM case  
20 dated November 7, 2006. Actually, I think  
21 this declaration says it's in connection with  
22 both the IBM case and this case, but here's  
23 that declaration.

24 I would ask you to look at  
25 paragraph 7, please. You can just read it to

W. Broderick

1 yourself.

2 A (Witness reviewing.)

3 Okay.

4 Q Can you just read the first  
5 sentence out loud?

6 A "My understanding of the sale of  
7 the UNIX assets from Novell to Santa Cruz was  
8 that the UNIX copyrights were transferred."

9 Q What's the basis for your  
10 statement there?

11 A It's an understanding of the asset  
12 purchase agreement, and discussions with  
13 people at Santa Cruz.

14 Q Why don't you tell me about  
15 the people at Santa Cruz who you discussed  
16 this with.

17 A Well, actually, it was more than  
18 the people at Santa Cruz. It was -- with the  
19 discussions, once we were told that the  
20 business was being sold to Santa Cruz, we had  
21 company-wide meetings.

22 And then we had smaller meetings  
23 within the functional groups, when we were  
24 identified which company we were going to be  
25 with.

W. Broderick

1           Q     Are you still at Novell when  
2 you say you had those meetings?

3           A     I think we were still officially  
4 Novell employees, and there was one or two  
5 company-wide meetings held in the cafeteria  
6 in the building in Florham Park, and then we  
7 had separate -- what I would call breakout  
8 meetings.

9                     There were a lot of transition  
10 teams set up, and we had meetings related to  
11 contracts, and there was a contracts  
12 transition team which included people from  
13 Santa Cruz and Novell, and we had discussions  
14 with them.

15           Q     Are you saying that in some or  
16 all of these meetings, it was said that  
17 copyrights were transferred from Novell to  
18 Santa Cruz?

19           A     There was no --

20                     MR. NORMAND:  Objection to form.

21           A     There was no specific discussion of  
22 copyrights, but in the initial company-wide  
23 meeting, we were told -- I believe the  
24 wording was Novell is going to focus on its  
25 core technology, which is Net Ware, and

W. Broderick

1 they're going to be selling the UNIX Ware  
2 business to Santa Cruz.

3 And then in the breakout meetings,  
4 we discussed it further, and we were told  
5 they sold all right, title and interest in  
6 the business, which was defined as the UNIX  
7 and UNIX Ware business, and to the assets of  
8 the business, and the assets were described  
9 as the source code, the binaries, development  
10 projects, all contracts.

11 And our opinion as contracts  
12 people, if you sell all right, title and  
13 interest in the assets, the assets include  
14 source code. Well, if you're selling all  
15 right, title and interest in the source code,  
16 the copyrights go.

17 It was not -- they were not  
18 specifically addressed in any of our  
19 discussions, because it was just assumed  
20 totally illogical for copyrights not to go  
21 with the source code if you're selling all  
22 title, right and interest in the source code.

23 Q But to clarify, nobody said in  
24 any of these meetings that the copyrights  
25 were also being transferred to Santa Cruz.

W. Broderick

1                   Is that right?

2                   MR. NORMAND:  Objection to form.

3                   A        I don't remember anybody  
4 specifically discussing copyrights, except to  
5 the point in some of the meetings they talked  
6 about activities related to changing the  
7 copyright notices in the source code to Santa  
8 Cruz Operation, Inc.

9                   Q        In UNIX code?

10                  A        In the source code products.  It  
11 was a long time ago.  I don't remember if  
12 they identified which one.

13                   I think they were just talking  
14 about source code product activities, and  
15 developers, if they had time to do certain  
16 things.

17                  Q        Do you remember what meeting  
18 that was, when it took place, where it took  
19 place, anything like that?

20                  A        During the transition time, people  
21 were talking about activities necessary to  
22 move the business to Santa Cruz, and there  
23 were a lot of meetings going on with trying  
24 to identify activities that had to be done,  
25 who would do them, who was staying at Novell,

W. Broderick

1 who was going to Santa Cruz, who was going to  
2 HP, who was not, and who would be doing what  
3 functions, and did we have resources to get  
4 everything done, what the timing would be.

5 Q Do you remember who said that  
6 there was going to be work on changing the  
7 copyrights in the source code?

8 MR. NORMAND: Actually, did you  
9 hear the question? What was the  
10 question?

11 (Whereupon the record was read back  
12 by the reporter.)

13 A It would be a guess. I'm trying to  
14 picture the meetings and the discussions that  
15 were going on, and the probable people -- it  
16 would be a guess.

17 You would have to confirm it with  
18 those people. I believe John Maciaszek would  
19 have been involved in it, in the discussion,  
20 possibly Lisa Osmik.

21 She was on the technical side.  
22 There were a lot of meetings and a lot of  
23 people going in and out, and a lot of  
24 discussions going on.

25 Q Do you remember ever seeing

W. Broderick

1 written agreement stating the terms and  
2 conditions. As a contracts manager, I  
3 personally worked very hard towards obtaining  
4 very clear and concise terms and conditions  
5 in contracts I work on.

6 Q If you intended to grant  
7 someone a license, you would always have a  
8 written agreement saying so.

9 Is that right?

10 A I would, yes.

11 Q And if you had an agreement  
12 that didn't say you were giving technology  
13 rights, does that mean you weren't?

14 MR. NORMAND: Objection to form,  
15 incomplete hypothetical.

16 A Can you be a little clearer on that  
17 question?

18 Q If you had an agreement with  
19 another company in which the agreement did  
20 not say the copyrights were transferred, then  
21 that means the copyrights were not  
22 transferred, correct?

23 MR. NORMAND: Objection to form,  
24 incomplete hypothetical.

25 A No, I believe in your question it



W. Broderick

1 depends on what rights or ownership you're  
2 transferring to technology, whether the  
3 copyrights would be -- would go as a matter  
4 of course.

5 Q So, they can get transferred,  
6 even if the agreement doesn't say so?

7 MR. NORMAND: Objection to form.

8 Same objection.

9 A It depends on the agreement. I  
10 mean, I think we're talking about a  
11 hypothetical here on a one-sentence question,  
12 and if we're -- I'm trying to be as clear as  
13 possible. I can't answer that on a  
14 one-sentence question.

15 I need some more reference. You  
16 said transfer technology. If you didn't say  
17 copyrights, what are the terms of the  
18 transfer? What technology?

19 Q Well, I'm just wondering --  
20 because you were saying that the copyrights  
21 are so important, I'm just wondering whether  
22 it's true that you would never intend to  
23 transfer copyrights in an agreement, yet not  
24 write it down?

25 MR. NORMAND: Objection to form.

W. Broderick

1 Same objection.

2 A I believe the copyrights could be  
3 inferred to be transferred, depending on the  
4 wording of the agreement.

5 Q Bringing us back, do you  
6 remember any -- having any conversations or  
7 being in any meetings where it was said that  
8 Novell has assigned its copyrights in UNIX to  
9 Santa Cruz?

10 MR. NORMAND: Objection to form,  
11 asked and answered.

12 A Those specific words? Novell has  
13 transferred the copyrights in UNIX to Santa  
14 Cruz?

15 Q Words to that effect?

16 A Words to that effect? I would  
17 answer yes, by the fact that we were told  
18 that Novell sold all right, title and  
19 interest in the technology. To me, that  
20 means the copyrights go with it.

21 Q But was it ever said more  
22 specifically than that?

23 MR. NORMAND: Asked and answered.

24 A I don't remember.

25 Q Can you remember any

W. Broderick

1 individuals who made the more general  
2 statement -- I don't want to misquote you --  
3 that all rights were transferred? We can go  
4 back and look at what you said.

5 MR. NORMAND: Objection to form.

6 Q Can you remember who would  
7 have said that Novell sold all right, title  
8 and interest in the technology?

9 A I believe in the transition  
10 meetings, it could have been said in the  
11 company-wide meeting, but in the transition  
12 team meetings, when we discussed the rules on  
13 how we would go forward as contracts people  
14 at Santa Cruz, we were told statements that  
15 included that statement.

16 And if you're looking for  
17 individuals who were involved in those  
18 meetings, there were people from -- who were  
19 staying at Novell, and there were people who  
20 were going to Santa Cruz. Are you looking  
21 for names?

22 Q Yes.

23 A Okay. It would have been Stu  
24 Adams. I believe he was staying with Novell  
25 at the time, Bert Levine, all the people that

W. Broderick

1 using this document, but I'm not going  
2 to instruct the witness not to answer  
3 questions about this document.

4 Q If you could look at section  
5 1.1, Mr. Broderick, I would appreciate it. I  
6 would say it's on the page that has the label  
7 008, but I don't want to draw an objection.

8 A Yes.

9 MR. NORMAND: I just don't want  
10 this document used at trial. That's not  
11 the document as is, but I think it's  
12 fine for the deposition.

13 Q Can you read to yourself  
14 section 1.1A?

15 A (Witness reviewing.)

16 Yes.

17 Q Mr. Broderick, do you see that  
18 section 1.1A references schedule 1.1A for the  
19 list of assets?

20 A Yes.

21 Q And do you see that section  
22 1.1A says that the purchased assets shall not  
23 include those assets set forth on schedule  
24 1.1B?

25 A Yes.

W. Broderick

1           Q       And then that's a direct  
2 quote. It says, "Notwithstanding the  
3 foregoing, the assets to be so purchased  
4 shall not include those assets, parens, the  
5 excluded assets set forth on schedule 1.1B,  
6 correct?

7           A       Yes.

8           Q       What's your understanding of  
9 that dichotomy between assets and excluded  
10 assets in this paragraph?

11           MR. NORMAND: Objection to form.

12           A       Well, the assets are 1.1A, the  
13 assets are listing the assets that are being  
14 transferred under this asset purchase  
15 agreement. I think it was intended to be an  
16 inclusive listing, but they did add to it  
17 later.

18                   The excluded assets are the assets  
19 that belong to Novell that are not being  
20 transferred, and in reading the excluded  
21 assets, Novell is excluding their Net Ware  
22 and Tuxedo products from the products that  
23 Novell owns that they are selling to Santa  
24 Cruz.

25           Q       What are you referring to

W. Broderick

1 with -- the Tuxedo and Net Ware?

2 A Yes.

3 Q Can you point me to what  
4 you're talking about there?

5 A If you take a look at it, the first  
6 line says, Any asset not listed on schedule  
7 1.1A, including, without limitation, any  
8 asset which pertains to Net Ware, which is  
9 not listed on schedule 1.1A, and under that  
10 on the schedule, it has Net Ware and it has  
11 Tuxedo, and it has Net Ware under 4A.

12 It has -- what I'm looking at is  
13 Net Ware, and going through it, to me, this  
14 schedule is related to Net Ware and the  
15 Tuxedo, which Novell is retaining. So, to be  
16 clear in the asset purchase agreement, they  
17 were selling the UNIX business, but they were  
18 not selling their Net Ware products or their  
19 Tuxedo products.

20 Q Were you just reading to me  
21 from schedule 1.1B of the APA?

22 A Yes.

23 Q And you were reading, I think,  
24 from Roman Numeral 1?

25 A Yes.

W. Broderick

1           Q       Which says, Any asset not  
2 listed on schedule 1.1A, including, without  
3 limitation, any asset which pertains to Net  
4 Ware, which is not listed on schedule 1.1A.

5                   Is that what it says?

6           A       Yes.

7           Q       Doesn't the phrase before that  
8 first comma mean any asset that is not listed  
9 on schedule 1.1A is an excluded asset?

10           MR. NORMAND: Objection to form.

11           A       Well, there are in -- I believe  
12 it's Amendment 1, they added the ancillary  
13 products or auxiliary products. I'm not sure  
14 how they had it, but -- what is your  
15 question?

16           Q       We're not talking about  
17 Amendment 1.

18           A       You're asking me what I believe the  
19 excluded assets were, and we were told at the  
20 time that Novell was selling the business  
21 that Novell was going to focus itself on its  
22 core technology, which was to Net Ware, and  
23 I'm looking at excluded assets here.

24                   And to me, this excluded assets  
25 schedule has to do with Net Ware and Tuxedo

W. Broderick

1 transaction processing.

2 Q Mr. Broderick, I want to back  
3 you up, and I'm not asking you what you were  
4 told. I'm asking you about what this  
5 agreement says.

6 Do you understand that?

7 A Sure.

8 Q Are you saying that all of the  
9 excluded assets listed here, from Roman  
10 Numeral 1 down through Roman Numeral 8,  
11 they're all limited to Net Ware or  
12 Tuxedo-related items?

13 A No.

14 Q Can you look at Roman Numeral  
15 5 of schedule 1.1B, which, for the record,  
16 bears the disputed number 062?

17 A And?

18 Q Have you read 5A and B?

19 A Yes.

20 Q Doesn't 5B mean that all  
21 patents are part of the excluded assets?

22 MR. NORMAND: Objection to form. I  
23 assume you're not -- you're asking his  
24 interpretation of this agreement?

25 MR. PERNICK: That's what I'm



W. Broderick

1 asking.

2 A My interpretation of this agreement  
3 is that where they're talking about patents,  
4 they're talking about the patents to the Net  
5 Ware or the Tuxedo.

6 Q That's what you think  
7 "patents" means in this context?

8 A That's what I think it means, yes.

9 Q What's your basis for that?

10 A I don't believe Novell had any  
11 patents related to UNIX or UNIX Ware because  
12 they didn't get them from AT&T, and I never  
13 heard of Novell saying that they had filed or  
14 received patents related to UNIX or UNIX Ware  
15 while we are part of Novell.

16 So, I did not think there were any  
17 patents to be transferred, so where they're  
18 talking about all patents, I'm assuming  
19 they're related to their Net Ware products.

20 Q Is there anything on this  
21 schedule 1.1B that indicates to you that the  
22 patents that are excluded in this transaction  
23 are the patents only relating to Net Ware and  
24 Tuxedo?

25 MR. NORMAND: Objection to form.

W. Broderick

1 engaged in the business of developing a line  
2 of software products, currently known as UNIX  
3 and UNIX Ware, the sale of binary and source  
4 code licenses to various versions of UNIX and  
5 UNIX Ware, the support of such products, and  
6 the sale of other products, which are  
7 directly related to UNIX and UNIX Ware,  
8 collectively, the business.

9           Then I go down to section 1.1A,  
10 which you had me look at earlier. Purchase  
11 and sale of assets, it's not a license to  
12 assets, it's a purchase and sale of assets on  
13 the terms, and subject to the conditions set  
14 forth in this agreement, seller will sell,  
15 convey, transfer, assign and deliver to  
16 buyer, and buyer will purchase and acquire  
17 from seller on the closing date all of  
18 seller's right, title and interest in and to  
19 the assets, and the properties of seller  
20 relating to the business, collectively, the  
21 assets.

22           Q       You left out --

23           A       (Reading.) Identified on schedule  
24 1.1A hereto, notwithstanding the foregoing,  
25 the assets to be so purchased shall not

W. Broderick

1 include those assets, the excluded assets set  
2 forth on 1.1B. Then, if you just quickly  
3 take a look at section 1.3AI, intent, it is  
4 the intent of the parties hereto that all of  
5 the business and all of the seller's backlog  
6 in any -- relating to the business be  
7 transferred to buyer, accordingly.

8 All parties agree to facilitate the  
9 transfer of customers of the business from  
10 seller to buyer, following the closing. To  
11 me, this is the sale of assets.

12 And if you're going to sell an  
13 asset, you sell it all, related to UNIX and  
14 UNIX Ware. That's my opinion.

15 Q Even though the agreement  
16 expressly says that we're not selling any  
17 patents on schedule 1.1B, right?

18 MR. NORMAND: Objection to form.

19 Q You agree it says that?

20 A I agree that that's what the  
21 agreement says, but I'm not clear on how you  
22 can sell all right, title and interest, and  
23 not get the -- and not get the part of the  
24 technology that's used to protect it, if  
25 there is any.

W. Broderick

1 Q We were talking about patents,  
2 but doesn't Roman 5 section 5 of schedule  
3 1.1B, the excluded assets, also exclude all  
4 copyrights?

5 MR. NORMAND: Objection to form.

6 A I've got the same argument on  
7 copyrights. I -- what I just read you before  
8 follows through on my opinion on the  
9 copyrights.

10 Q You think that the only  
11 copyrights that were excluded by section  
12 1.1A, and these two schedules, the only  
13 copyrights that you think were excluded were  
14 the Net Ware and Tuxedo copyrights?

15 A Yes.

16 Q And is that based on your same  
17 reasoning, as with patents?

18 A Yes, it is.

19 Q And do you have the same  
20 reasoning for trademarks?

21 A Are you talking about where it  
22 says, Trademarks, except for the trademarks  
23 UNIX and UNIX Ware?

24 Q Yes.

25 A One of the reasons why I have the

W. Broderick

1 opinion that this is related to the Net Ware  
2 and the Tuxedo, Net Ware worked as a bundled  
3 product, or integrated with UNIX and UNIX  
4 Ware. They were excluding that from the  
5 assets transferred.

6 So, if you transferred UNIX Ware,  
7 if you sold UNIX Ware lock, stock and barrel  
8 to Santa Cruz, if it had the Net Ware in it,  
9 in order that SCO couldn't say, We now own  
10 Net Ware, they listed it on this excluded  
11 assets.

12 Within the Net Ware, I believe  
13 there were attributes to -- there were UNIX  
14 and UNIX Ware and there were attributes to  
15 the UNIX and UNIX Ware trademarks, and that's  
16 why they exclude it here, except for the  
17 trademarks UNIX and UNIX Ware, to the extent  
18 they were used in those products.

19 Q I'm sorry, I don't follow,  
20 Mr. Broderick. As I understand your  
21 reasoning when you were talking about patents  
22 and copyrights, you said that you have to  
23 interpret this agreement, as -- this schedule  
24 implicitly as only applying, only carving  
25 out, the patents and copyrights that relate

W. Broderick

1 here.

2 MR. NORMAND: Objection to form.

3 Q This schedule 1.1B in numerous  
4 places contains the modifier, Net Ware or  
5 Tuxedo, the parties knew how to spell it out  
6 when they wanted to.

7 MR. NORMAND: Is this a question?

8 Q And yet you believe they  
9 intended modifiers for Tuxedo and Net Ware on  
10 the intellectual property, but just didn't  
11 put it in there?

12 MR. NORMAND: Objection to form,  
13 argumentative, asked and answered, lack  
14 of foundation, mischaracterizes his  
15 previous testimony.

16 Q Is that what you're saying?

17 A I stated my opinion. I can see no  
18 reason why the copyrights for UNIX or UNIX  
19 Ware would have been excluded in the sale of  
20 the assets to Santa Cruz, and that's  
21 supported by other information, other  
22 agreements between Novell and Santa Cruz that  
23 I reviewed.

24 Q So, let me just make sure I  
25 have it right. Look at Roman 2 on schedule

W. Broderick

1 1.1B, excluded assets, it says that Net Ware  
2 operating system and services are excluded,  
3 right?

4 MR. NORMAND: Objection to form.

5 A Yes.

6 Q Why did they need to use the  
7 modifier, Net Ware? Wasn't it already --  
8 under your rational, wasn't it already  
9 assumed that everything listed here relates  
10 to Net Ware or Tuxedo?

11 MR. NORMAND: Objection to form,  
12 mischaracterizes his testimony.

13 A That's to clarify it further,  
14 but -- I don't want to get into an argument  
15 here, but if you look at 4A, it says, Net  
16 Ware and other Novell code contained in UNIX  
17 Ware 2.01 and higher, this is my position,  
18 that there was Net Ware and UNIX Ware, and  
19 they were excluding that so that Santa Cruz  
20 could not at some point in time claim  
21 ownership of Net Ware. That's why they are  
22 listing it as excluded. It's my opinion.

23 Q Why would it be, in your  
24 opinion, listed expressly as a modifier in  
25 Roman 2, but not listed explicitly on the

W. Broderick

1 copyrights or the patents?

2 A I don't know.

3 MR. NORMAND: Objection to form.

4 Q Isn't it possible if they  
5 didn't include a modifier, they didn't intend  
6 the modifier?

7 MR. NORMAND: Objection to form.

8 A I can't believe that.

9 Q Why not?

10 A One reason is if Novell retained  
11 the copyrights and ownership of UNIX, as they  
12 are claiming, why at the time when they  
13 signed the asset purchase agreement did they  
14 sign a technology license agreement with  
15 Santa Cruz, which gave them very limited  
16 rights to use UNIX source code internally,  
17 only internally, with also very strict  
18 requirements and limitations on their  
19 distribution of any use of that source code  
20 in binary form?

21 If in fact Novell owned the UNIX,  
22 didn't transfer the copyright and still owned  
23 UNIX, there would be no reason for them to  
24 take a license for the product.

25 Q Can you point me to anywhere



W. Broderick

1 in the APA where it says that copyrights to  
2 UNIX were transferred from Novell to Santa  
3 Cruz?

4 MR. NORMAND: Objection to form,  
5 asked and answered.

6 A I believe I answered that before,  
7 where I said -- the businesses of UNIX and  
8 UNIX Ware business, including the source  
9 code, and they sold all right, title and  
10 interest in the assets, the assets including  
11 the source code.

12 If you sell all right, title and  
13 interest in the source code, you're selling  
14 the copyrights with it. They go with it.

15 Q It says all right, title and  
16 interest in and to the assets, dot, dot dot,  
17 identified on schedule 1.1A hereto, correct?

18 MR. NORMAND: Objection to form.

19 A That's correct, but -- you know,  
20 when you take a look at the contract, you  
21 have to take a look at the whole contract,  
22 and as a clarifier, they did Amendment 2.

23 Q We're not there yet.

24 A Well --

25 Q I'm going to ask you about

W. Broderick

1 that. I'll give you a chance.

2 A I'm a contracts person. When I  
3 talk about contract, I don't pull sentences  
4 out of a contract and make a decision. I  
5 look at the whole relationship.

6 Q They don't have the same  
7 effective date, so we'll get to Amendment 2,  
8 I promise you. I will give you a chance, but  
9 it doesn't relate back.

10 I'm asking about the APA now.  
11 Can you tell me where on schedule 1.1A it  
12 says that copyrights in UNIX were  
13 transferred?

14 A I don't believe --

15 MR. NORMAND: You're asking him  
16 whether those words appear in 1.1A?

17 MR. PERNICK: That's not my  
18 question, and I would appreciate your  
19 limiting your objections.

20 MR. NORMAND: I would appreciate  
21 you getting off this ridiculous exercise  
22 where you're asking him what it says.  
23 You need to phrase your questions much  
24 better.

25 I've been incredibly lenient with

W. Broderick

1           you. You need to ask much better  
2           questions. You need to ask him of his  
3           interpretation, or his understanding.  
4           Stop asking him what it says. We know  
5           what it says.

6           MR. PERNICK: The question is  
7           perfect.

8           MR. NORMAND: The question is not  
9           perfect. They're awful.

10          MR. PERNICK: It's a thousand  
11          percent perfect. Can you read back the  
12          question, please?

13          (Whereupon the record was read back  
14          by the reporter.)

15          MR. NORMAND: Objection to form.  
16          We can stipulate those words do not  
17          appear in schedule 1.1A. It would  
18          simplify this line of questioning a  
19          great deal.

20          Q        You can answer, Mr. Broderick.

21          MR. NORMAND: If you can.

22          Q        Let me rephrase that. You  
23          must answer, Mr. Broderick.

24          MR. NORMAND: If you can.

25          A        (Reading.) I don't see the word

W. Broderick

1 copyright on schedule 1.1A, but as I stated  
2 earlier on the assets being sold, all rights  
3 and ownership of UNIX and UNIX Ware, included  
4 and not limited to all versions of UNIX and  
5 UNIX Ware and all copies of UNIX and UNIX  
6 Ware, including revisions and updates in  
7 process and all technical design,  
8 development, installation, operation and  
9 maintenance information concerning UNIX and  
10 UNIX Ware, including source code source  
11 documentation, source listings and  
12 annotations, appropriate engineering,  
13 notebooks, test data, test results, as well  
14 as all reference manuals and support  
15 materials normally distributed by seller to  
16 end users and potential end users in  
17 connection with the distribution of UNIX and  
18 UNIX Ware, such assets to include, without  
19 limitation, the following.

20           And in the rest of the schedule, it  
21 lists all of the System 5 products, the UNIX  
22 Ware products. To me, this says copyrights  
23 went. That's my opinion.

24           Q       In the phrasing that you just  
25 read from Roman 1, which language in

W. Broderick

1 particular to you says the copyrights were  
2 transferred?

3 MR. NORMAND: Objection to form.

4 A For the descriptions that followed,  
5 all rights and ownership. If you have all  
6 rights and ownership to the source code, you  
7 have the copyrights with that source code.

8 Q That's your belief?

9 A That's my belief.

10 Q Even though schedule 1.1B  
11 specifically excludes the copyrights?

12 MR. NORMAND: Objection to form.

13 A My belief is that that schedule  
14 excludes the copyrights to the Tuxedo and the  
15 Net Ware products.

16 Q Did you ever discuss whether  
17 schedule 1.1B only referred to Tuxedo and Net  
18 Ware assets with anyone?

19 MR. NORMAND: Subject to the same  
20 instructions that I gave you earlier --  
21 there was no time frame in that  
22 question, was there?

23 MR. PERNICK: No.

24 A The discussion came up since the  
25 litigation started, and it was with an

W. Broderick

1 Q Why would you have sent it to  
2 them?

3 A Well, John was a product person,  
4 and he had a lot of time with the company.  
5 Jean was a finance person, she worked with  
6 royalty reporting.

7 I might have -- what I'm saying, I  
8 put this thing together and I showed it to  
9 Harrison. It could have been further  
10 distributed. I could have sent it on to some  
11 other people.

12 Q Do you remember getting any  
13 comments or reactions back from anybody?

14 A No. I hope I did. I spent some  
15 time on it.

16 Q How long did you spend on it?

17 A Probably -- in total, probably took  
18 a few man days to do because it was digging  
19 out agreements, and reading them. It wasn't  
20 a cut and paste. It was typing.

21 Q Were you trying, in putting  
22 this together, to be as complete and accurate  
23 as possible?

24 A Well, that's my goal with anything  
25 I do.

W. Broderick

1           Q       Can you flip to page 6 of 13  
2 in this document? It has Bates number SCO  
3 1299296.

4           A       Yes.

5           Q       Do you see there that you have  
6 a subtitle that says, Novell, Inc., dash, the  
7 Santa Cruz operation, Inc., asset purchase  
8 agreement, September 1995?

9           A       Yes.

10          Q       The paragraphs that follow  
11 below there, the three paragraphs, are they  
12 excerpts from the APA?

13          A       They look to be. I would have to  
14 match them up side-by-side to take a look,  
15 but they look to be. There could be some  
16 paraphrasing.

17          Q       Can you look and tell me  
18 whether you included any language in there  
19 from schedule 1.1B, the excluded assets?

20          A       I don't believe I did.

21          Q       Do you know why?

22          A       Because we are -- were talking  
23 about what we owned, not what we did not own.

24          Q       Didn't it say that copyrights  
25 are excluded, and patents and certain

W. Broderick

1 trademarks?

2 MR. NORMAND: Objection to form.

3 A I did take us back to our previous  
4 discussion, where all right and ownership of  
5 UNIX and UNIX Ware went to Santa Cruz from  
6 Novell, and it's my opinion that copyrights  
7 went.

8 Q Did you consider whether to  
9 put in the language from schedule 1.1B in  
10 this memo?

11 A No, I did not. I saw no reason to.  
12 I was listing what the companies owned, not  
13 what they did not own, and we did not own the  
14 Net Ware and the Tuxedo.

15 Q You thought that the "all  
16 copyrights" language on schedule 1.1B had no  
17 relevance to this memo?

18 A I thought the unclear language on  
19 1.1B was trumped by Amendment 2, which  
20 included all copyrights related to the  
21 business.

22 Q Did you include that language  
23 in here?

24 A No, I did not.

25 Q How come?



W. Broderick

1           A       It wasn't necessary.

2           Q       Well, you just said, though,  
3 that it trumped what was in schedule 1.1B?

4           A       What I was writing up here is  
5 implicit, that copyrights went with the  
6 source code.

7           Q       What do you mean by that?

8           MR. NORMAND: Objection to form.

9           Asked and answered.

10          A       I mean, we've -- I'm sorry, we've  
11 been over this numerous times. When you sell  
12 all right, title and interest in something in  
13 source code, the copyrights go with it.

14                 I did not break out copyrights in  
15 this description here because, in my opinion,  
16 the copyrights went.

17          Q       You just told me that  
18 Amendment number 2 had some bearing on your  
19 conclusion. You said --

20          A       No, Amendment 2 reaffirmed my  
21 belief that the copyrights went, because  
22 Amendment 2 clarified -- had clarifications  
23 to the asset purchase agreement.

24          Q       So, why did you put it in this  
25 memo?

W. Broderick

1 believe the copyrights were transferred?

2 MR. NORMAND: Objection to form.

3 A Yes. And if you give me one  
4 second, I think there was an additional  
5 section, another thing that -- in section  
6 2.10 of the asset purchase agreement,  
7 representations and warranties.

8 (Reading.) It says, Technology,  
9 these are representations and warranties, to  
10 the knowledge of seller as of the date  
11 hereof, seller owns co-owns, or is licensed  
12 or otherwise entitled to use rights to all  
13 patents, trademarks, trade names, service  
14 marks, copyrights, mask work rights, trade  
15 secret rights, and other intellectual  
16 property rights, and any applications  
17 thereof, and all mask works net lists,  
18 schematics, technology, source code,  
19 know-how, computer software programs, and all  
20 other tangible information or material that  
21 are used in the business, as currently  
22 conducted.

23 Now, the question is, why would  
24 they have to -- and warrant all of this if  
25 this was not the technology they were

W. Broderick

1 selling, inclusive? That's my opinion.

2 Q You think that supports the  
3 idea that all the copyrights and patents and  
4 trade names and service marks and mask work  
5 rights were all transferred?

6 MR. NORMAND: Objection to form.

7 A Related to the UNIX and UNIX Ware  
8 business.

9 Q Even though it doesn't say  
10 that anywhere?

11 MR. NORMAND: Objection to form.

12 A I believe I pointed out enough  
13 places where it's strongly inferred, and  
14 copyrights are specifically spelled out in  
15 Amendment 2.

16 Q Let me give you Amendment 2.  
17 We marked -- it's been previously marked  
18 Exhibit 10 from the Stowell deposition. It's  
19 Amendment 2 to the asset purchase agreement.

20 MR. PERNICK: You already have that  
21 one?

22 MR. NORMAND: I think I do.

23 Q Are you familiar with this  
24 document?

25 A Yes, I am.

W. Broderick

1           Q     How many times have you read  
2 it, do you think?

3           A     Quite a few.

4           Q     Meaning, more than a hundred,  
5 or less than a hundred, but more than ten?  
6 Just some ball park?

7           A     A dozen or so times.

8           Q     Thank you. Can you tell me  
9 what the effective date of this Amendment 2  
10 is?

11          A     16 October 1996.

12          Q     Does it say anywhere that this  
13 has retroactive effect going back to the  
14 original asset purchase agreement?

15               MR. NORMAND: Objection to form.

16          A     It says -- it's an Amendment 2 to  
17 the asset purchase agreement. It means it  
18 amends the asset purchase agreement. I'm  
19 missing your point.

20          Q     Its effective date is  
21 October 16, 1996?

22               MR. NORMAND: Objection, to the  
23 extent it calls for a legal conclusion.

24          A     That's the date that is on it. I'm  
25 not sure what you're -- what point you're

W. Broderick

1 trying to make here.

2 Q I'm just asking. I'm not  
3 trying to make a point.

4 A It -- well, it says as of 16 day of  
5 October 1996 to September 1995 asset purchase  
6 agreement, the agreement between Novell,  
7 Inc., and the Santa Cruz operation, Inc., is  
8 amended in the following respects.

9 To me, this amends the asset  
10 purchase agreement from the date the asset  
11 purchase agreement -- this goes back and  
12 amends the agreement.

13 Q As of September 19, 1995?

14 A Well, yes.

15 Q Why do you think that?

16 A Because this is just a date that  
17 they signed this amendment, and it says it  
18 amends the asset purchase agreement. It  
19 doesn't say it amends the asset purchase  
20 agreement as of this effective date. Am I  
21 reading something wrong here?

22 Q You did read the first two  
23 words to say "as of", and it says as of the  
24 16th day of October 1996, right?

25 A To me, this document amends the

W. Broderick

1 asset purchase agreement, and there's no --  
2 the asset agreement sits in place at one  
3 time, and this amends it from that point  
4 forward. I don't agree with that conclusion.

5 Q Have you discussed that issue  
6 with anyone?

7 A No, I haven't. You're the first  
8 one that dreamed it up -- I mean, brought it  
9 up.

10 Q You can read to yourself  
11 section 5. I just want to make sure we're  
12 focused on it.

13 A (Witness reviewing.)

14 Okay.

15 Q Do you think that this section  
16 A has any effect on the ownership of the  
17 copyrights in UNIX?

18 MR. NORMAND: Objection to form.

19 A I think this section clarifies that  
20 the copyrights were owned by Santa Cruz  
21 operation, as of the effective date of the  
22 APA.

23 Q Which copyrights?

24 A The copyrights associated with the  
25 UNIX and UNIX Ware.

W. Broderick

1 Q All of them?

2 A All copyrights associated with UNIX  
3 and UNIX Ware.

4 Q Does it say that?

5 A Yes.

6 Q Where does it say that in  
7 section A of this Amendment number 2?

8 A "All copyrights and trademarks  
9 required for SCO to exercise its rights with  
10 respect to the acquisition of UNIX and UNIX  
11 Ware technologies."

12 Q What does that phrase,  
13 Required for SCO to exercise its rights with  
14 respect to the acquisition of UNIX and UNIX  
15 Ware technologies, mean to you?

16 A To exercise its full rights of  
17 ownership, Santa Cruz purchased all right,  
18 title and interest in the UNIX and UNIX Ware,  
19 the copyrights went with it. This was a  
20 clarification that the copyrights went with  
21 it, because some people were reading the  
22 asset purchase agreement in an improper way.

23 Q There is a carve out here. It  
24 doesn't just say all copyrights and  
25 trademarks, period, right?

W. Broderick

1 MR. NORMAND: Objection to form.

2 A Where's the carve out?

3 Q There's a comma, and then it  
4 takes something out of all copyrights and  
5 trademarks, doesn't it?

6 A You mean where it says "except for  
7 the copyrights and trademarks owned by  
8 Novell"?

9 Q Yes, keep going.

10 A "As of the date of the agreement  
11 required for SCO to exercise its rights with  
12 respect to the acquisition of UNIX and UNIX  
13 Ware technologies."

14 Q Here's my question. This is  
15 in the excluded asset section, right?

16 A That's right, and they are  
17 excluding all copyrights and trademarks  
18 except for the copyrights and trademarks with  
19 respect to the acquisition of UNIX and UNIX  
20 Ware.

21 They're taking those copyrights for  
22 UNIX and UNIX Ware off of the excluded assets  
23 list.

24 Q How do you define -- first of  
25 all, they were excluded before, right? Is



W. Broderick

1 that what you're saying?

2 A This is a clarification they were  
3 not. The copyrights went with UNIX and UNIX  
4 Ware by virtue of all that I went through  
5 before. This is a clarification that they  
6 did go.

7 Q And why was a clarification  
8 needed?

9 A Apparently, there was some people  
10 that were misinterpreting parts of the asset  
11 purchase agreement, the excluded assets form.

12 Q You say "apparently". Do you  
13 know --

14 A I don't know for a fact. I was not  
15 in on the negotiation -- or the writing of  
16 Amendment 2.

17 Q Do you know of any people who  
18 were contesting whether the copyrights and  
19 trademarks were excluded assets?

20 A I think it was just people reading  
21 it and clarifying it. I'm not aware of any  
22 individual who was objecting to it.

23 Q So, I'm just asking you, what  
24 does that mean to you, the phrase after the  
25 comma, where excluding all copyrights and

W. Broderick

1 trademarks except for the copyrights and  
2 trademarks owned by Novell as of the date of  
3 the agreement required for SCO to exercise  
4 its rights with respect to the acquisition of  
5 UNIX and UNIX Ware technologies?

6 A That says at the time the APA was  
7 executed, Novell owned the copyrights to UNIX  
8 and UNIX Ware. That was -- that's as of the  
9 date of the agreement.

10 After the closing date, SCO  
11 acquired ownership of all those copyrights in  
12 order to exercise their rights with respect  
13 to the acquisition of UNIX and UNIX Ware. To  
14 support the fact that its an acknowledgement  
15 that Novell gave up the copyrights, the last  
16 sentence is, In no event shall Novell be  
17 liable to SCO for any claim brought by any  
18 third party pertaining to said copyrights and  
19 trademarks.

20 It's clear that Novell is  
21 acknowledging they gave them up, because they  
22 want to state in here, specifically, they  
23 have no liability relating to them anymore.

24 Q Do you view this amendment as  
25 saying that now all copyrights and trademarks

W. Broderick

1 know.

2 Q Let me ask you to look -- the  
3 easiest way is to be looking at the  
4 intellectual property memo, that's Exhibit  
5 36. If you look at page 6 of 13, Bates  
6 number SCO 1299296, you've got the first  
7 paragraph under the heading Novell Santa Cruz  
8 asset purchase agreement.

9 That first paragraph, which  
10 we've discussed, is a paraphrase of section  
11 1.1A, but I just want to take note and see if  
12 you notice the word "will" in, quote, Novell  
13 Inc. will sell, convey, transfer, assign and  
14 deliver to the Santa Cruz Operation, Inc.,  
15 and the Santa Cruz Operation, Inc., will  
16 purchase and acquire from Novell, Inc., on  
17 the closing date all of Novell, Inc.'s right,  
18 title and interest in and to the assets and  
19 properties of Novell, Inc., relating to the  
20 business.

21 Do you see it says "will",  
22 speaking of something that will happen in the  
23 future, right?

24 A Okay.

25 Q If you flip back to page 4 of

W. Broderick

1 13, back two pages, you've got a paragraph  
2 from the Caldera and Santa Cruz asset  
3 purchase from May of 2001.

4 Do you see that?

5 A Yes.

6 Q And do you see that the first  
7 line there says, The Santa Cruz Operation,  
8 Inc., assigns, transfers and conveys to  
9 Caldera, Inc. -- International, Inc., all  
10 right, title and interest throughout the  
11 world in and to the inventions and works, and  
12 so on?

13 A Yes.

14 Q Do you think there's any -- in  
15 your experience, what's the impact of the  
16 difference in the tense that is used in those  
17 two different paragraphs?

18 MR. NORMAND: Objection to form. I  
19 would tend to describe this as a trick  
20 question.

21 A To me, the asset purchase agreement  
22 was signed September 1995. The closing date  
23 of the deal is sometime after that.

24 So, what this is saying, where it  
25 says Novell will sell and buyer will

W. Broderick

1 purchase, it's as of the closing date. All  
2 they're doing is saying "we're signing the  
3 agreement now, and on the closing date the  
4 transaction happens."

5 The other agreement is -- to me, is  
6 as of the date of this agreement, everything  
7 is done. It's a timing issue, unless I'm  
8 missing something. I'm not an attorney.

9 I didn't write it. I don't know if  
10 there are any kind of legal nuances that  
11 you're trying to get at.

12 Q As you understand, the asset  
13 purchase agreement between Novell and Santa  
14 Cruz in itself did not sell, convey, transfer  
15 or assign any trademarks or copyrights.

16 Is that right?

17 MR. NORMAND: Objection to form,  
18 mischaracterizes his testimony.

19 A To me, it did. It just did it as  
20 of the closing date.

21 Q What do you base that on?

22 A I can read English.

23 Q Does it speak in the future  
24 tense so that's something -- it says will  
25 happen --

W. Broderick

1           A       I'm sorry.

2           Q       -- that something will happen,  
3 but are you saying this means it already has  
4 happened?

5           MR. NORMAND:   Objection to form.

6           Are you asking him about the memo or the  
7 APA at this point?

8           MR. PERNICK:   We can look at the  
9 APA, section 1.1A, which is on page 008,  
10 asterisk, of the asset purchase  
11 agreement.

12          A       The only difference between the  
13 wording that we're talking about is the asset  
14 purchase agreement says it "will" happen on  
15 the closing date.

16          Q       Do you know -- if it happened  
17 on the closing date, do you know if there was  
18 any sale, conveyance, transfer or assignment  
19 of any intellectual property rights by Novell  
20 to Santa Cruz?

21          MR. NORMAND:   Objection to form,  
22 lack of foundation.

23          A       I don't know how to answer that.

24          Q       How come?

25          A       Well, the asset purchase agreement

W. Broderick

1 copyright went.

2 Q What's your basis for saying  
3 that?

4 MR. NORMAND: Objection, form.

5 Asked and answered.

6 A I've been through this all morning.

7 Q That wasn't asked and  
8 answered. You said with the transfer of the  
9 tapes. This was totally new. You said with  
10 that, went the copyrights.

11 So, I'm asking you, what's  
12 your basis?

13 MR. NORMAND: Objection, form.

14 Asked and answered.

15 A We'll start over. With the  
16 transfer of the --

17 MR. NORMAND: Let's not start over.

18 Let's refer back to your earlier  
19 answers, if you have nothing new to say.

20 A I don't have anything new to say on  
21 it.

22 Q How many times do you think  
23 you read the APA between Novell and Santa  
24 Cruz?

25 MR. NORMAND: Objection to form.

W. Broderick

1 Foundation.

2 A It could be a dozen times.

3 Q Was that your best estimate?

4 A Yes.

5 Q And did you have any  
6 involvement at all in negotiating the APA?

7 A No, I did not.

8 Q Any involvement at all in  
9 negotiating any of the amendments to the APA?

10 A No, I did not.

11 THE VIDEOGRAPHER: Off record,  
12 2:43.

13 (Brief recess taken.)

14 THE VIDEOGRAPHER: Stand by, back  
15 on the record, 2:50.

16 Q Mr. Broderick, could you  
17 please flip back to the 20-year declarations,  
18 Exhibit 29, which is your declarations signed  
19 on November 7, 2006?

20 A Okay.

21 Q And I would ask you to look at  
22 the second sentence in paragraph 7. It says,  
23 To the best of my knowledge, from the time of  
24 the closing of the APA in 1995 until after  
25 SCO asserted legal claims concerning its



W. Broderick

1 LINUX-related rights in 2003, Novell never  
2 contested SCO's ownership of the UNIX  
3 copyrights."

4 Is that still true, to the  
5 best of your knowledge?

6 A To the best of my knowledge, yes.

7 Q Let me just ask you, when you  
8 made that statement, why would Novell ever  
9 have contested SCO's ownership of the UNIX  
10 copyrights?

11 MR. NORMAND: Objection to form.

12 A To my knowledge, they would never  
13 have, because they knew that the copyrights  
14 went with the technology when they sold the  
15 UNIX business to Santa Cruz.

16 Q But the word "contested", I'm  
17 just focusing on the word "contested" in your  
18 declaration in paragraph 7.

19 Was SCO out there contending  
20 that it had -- that it owned the copyrights  
21 to UNIX?

22 MR. NORMAND: Objection to form.

23 Q The way I read the word  
24 contested is that you can't contest something  
25 unless the other party is making an

W. Broderick

1 assertion.

2 A Well, I don't know. All I know is  
3 that Novell never made any comments about the  
4 copyrights not going until they started  
5 making those claims in 2003.

6 Q To your knowledge, before that  
7 time in 2003, was SCO affirmatively saying  
8 that it had the copyrights to UNIX?

9 A I believe the whole software  
10 industry acknowledged -- or assumed that SCO  
11 had the copyrights to UNIX and UNIX Ware.

12 Q Do you know if Novell was  
13 aware of that?

14 A I don't know what Novell was aware  
15 of.

16 Q What's the point of the  
17 statement you're making in paragraph 7?

18 A Well, Novell is trying to make  
19 claims that the copyrights did not go with  
20 the UNIX business that was sold to Santa  
21 Cruz. I've seen some statements from Novell  
22 that, in fact, they're claiming they still  
23 own UNIX.

24 This all started in 2003, and what  
25 I'm saying is, from the time in 1996 when we

## C E R T I F I C A T E

1  
2 I, MICHAEL FRIEDMAN, a Certified Court  
3 Reporter and Notary Public, qualified in and for  
4 the State of New Jersey do hereby certify that  
5 prior to the commencement of the examination  
6 WILLIAM BRODERICK was duly sworn by me to testify  
7 to the truth the whole truth and nothing but the  
8 truth.

9 I DO FURTHER CERTIFY that the foregoing  
10 is a true and accurate transcript of the testimony  
11 as taken stenographically by and before me at the  
12 time, place and on the date hereinbefore set forth.

13 I DO FURTHER certify that I am neither a  
14 relative of nor employee nor attorney nor counsel  
15 for any of the parties to this action, and that I  
16 am neither a relative nor employee of such attorney  
17 or counsel, and that I am not financially  
18 interested in the action.

19  
20  
21  
22 -----  
23 MICHAEL FRIEDMAN, Certified Shorthand  
24 Reporter and Notary Public of the State  
25 of New Jersey

Date: February 1, 2007