

EXHIBIT 14A

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

THE SCO GROUP, INC., a)
Delaware corporation,) Deposition of:
)
Plaintiff,) JEAN ACHESON
)
vs.)
)
NOVELL, INC., a Delaware) Case No. 2:04CV00139
corporation,)
) Judge Dale A. Kimball
Defendants.)

MARCH 20, 2007 * 9:30 a.m.

Location: Anderson & Karrenberg
700 Chase Tower
50 West Broadway
Salt Lake City, Utah 84101

Reporter: Diana Kent, CSR, RPR, CRR
Notary Public in and for the State of Utah
Videographer: Max Nelson, CLVS

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1 Q. Any related to bookkeeping, accounting?

2 A. Some. Sometimes. Sometimes not.

3 Q. Okay.

4 A. Also, I was living in New York City. We
5 had the Jacob Javits Center there, so I sometimes
6 worked the shows. Things like that.

7 Q. So then you went to USL?

8 A. Uh-huh (affirmative).

9 Q. At the end of 1990?

10 A. Yes, I believe it was.

11 Q. And what were you --

12 A. I went there as a temp, basically, to work
13 in the accounts payable and just ended up staying.
14 About a year later, hired permanently. And probably
15 a little after that moved into revenue accounting.

16 Q. Okay. And what were your job
17 responsibilities in that?

18 A. Processing the OEM reports.

19 Q. Okay. And what else?

20 A. That was basically it. Processing the
21 SVRX royalties for the quarterly reports, and all
22 ancillary stuff around it. You know, forecasting,
23 accruals.

24 Q. And how long did you do that?

25 A. That's what I have been doing almost ever

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1 since.

2 Q. Well, I mean at AT&T USL.

3 A. All the way through the time that Novell
4 purchased the company.

5 Q. So when was that?

6 A. 19 -- oh, great. 1993. Yeah, I think it
7 was a couple of years later. 1994, somewhere in
8 there.

9 Q. And you went to Novell?

10 A. Yes.

11 Q. Okay. And what were you doing then at
12 Novell?

13 A. Basically the exact same thing.

14 Q. Did your job responsibilities change while
15 you were at Novell?

16 A. Not really. It was mostly just processing
17 the OEM reports. Worked on -- that's approximately
18 when I also received the Oracle Master's. So I was
19 also working on the financial systems to produce
20 reporting and things in revenue.

21 Q. And what do you mean by that, "working on
22 the financial systems"?

23 A. We used an Oracle financial system. So by
24 learning how to get the data out of it so as to
25 design custom reports and processes.

1 Q. Okay. Anything else change about your job
2 responsibilities while you were at Novell?

3 A. Not until the end.

4 Q. And what happened then?

5 A. Well, at the point where Novell decided to
6 sell off the UNIX product line to the Santa Cruz
7 Operation, my then boss, who was the revenue manager,
8 decided to remain with Novell in another capacity,
9 and I started taking over the management responsibil-
10 ities. However, very soon in the transition process,
11 and prior to almost everyone else, I was hired by
12 Santa Cruz.

13 Q. But you took over management
14 responsibilities, you mean before you left?

15 A. It was sort of right in the same area. I
16 can't remember which came first.

17 Q. Okay.

18 A. But --

19 Q. I'm sorry.

20 A. That's okay. Go ahead.

21 Q. And who was the boss that decided to
22 remain?

23 A. Carol Lynn Kuchinsky.

24 Q. So how did your responsibilities change as
25 you became the manager?

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1 A. There were other aspects to the revenue
2 and so I took over the other aspects as well as
3 managing the revenue group. I also worked on the
4 Novell/SCO transition team from the finance
5 viewpoint. And then going into SCO we had a world-
6 wide revenue manager. I was basically the manager of
7 this small segment. So we took -- so basically that
8 ended up under SCO for royalty administration.

9 Q. You said that you took over management
10 responsibilities and there were other aspects to
11 revenue. What did you mean by that?

12 A. Well, there were services, source code.
13 But mostly just processing the OEM reports. But it
14 was larger than one person at that time could handle.

15 Q. So who else worked on that with you?

16 A. At that time, in Novell we had Barb
17 Cavalla, Kathy Stetzer, there was another woman and I
18 can't think of her name. And Joyce Charles. Because
19 we also had receivables and credit, collections.

20 Q. You said you worked on the transition
21 team, also?

22 A. Yes.

23 Q. Did you have any role in negotiating the
24 Asset Purchase Agreement between Novell and Santa
25 Cruz?

1 A. No. Not directly on the first part. That
2 was held way, you know, closely from any of the
3 employees. The transition team may have shaped some
4 of what went into later addendums as we worked on
5 trying to understand the APA.

6 Q. I think you said, I don't remember your
7 exact words, but employees had no role in the initial
8 Asset Purchase Agreement?

9 A. Well, there were employees, yes. But they
10 were higher level.

11 Q. Okay.

12 A. And they were keeping it highly
13 confidential.

14 Q. And on addendums, you might have had a
15 role?

16 A. I might have had some clarifications. We
17 may have contributed to some of the clarifications in
18 Addendum 1.

19 Q. What do you remember about that?

20 A. Basically -- it's hard to say without
21 actually seeing the agreement, but I think there was
22 some clarifications as to revenue, and clarifications
23 on other, you know, just various things. Maybe on
24 audits.

25 Q. And are you saying that you drove some of

1 the clarifications?

2 MR. GONZALES: Objection to form.

3 A. I don't know.

4 MR. GONZALES: Objection to form.

5 Go ahead and answer.

6 A. I don't know if I personally drove. But
7 it may have been as a result of some of the questions
8 that came out of our transition team.

9 Q. Do you remember whether -- did you look at
10 contractual documents and provide comments like, "It
11 should say this. This shouldn't say that"?

12 A. We weren't attorneys, so I'm not sure we
13 would have given comment as far as that. But we
14 probably would have requested clarifications. And
15 the document, as I stated, was negotiated at a very
16 high level and not by people who understood the
17 day-to-day processing. So it was sometimes hard to
18 reconcile what was in the APA with what actually
19 occurred on a day-to-day basis.

20 Q. Now, you are talking about at this point
21 you are at Santa Cruz?

22 A. At this point we are still very hybrid.
23 I'm, at this point, a SCO employee but we are still
24 on the Novell premises in New Jersey.

25 MR. PERNICK: Amendment 1 to the Asset

1 Purchase Agreement I believe is already Exhibit 1026
2 in this matter but I'll give a copy of that to the
3 witness.

4 Q. (By Mr. Pernick) And I'll just ask you,
5 Ms. Acheson, I think you said you would be better
6 able to answer if you looked at the Amendment. I
7 wanted to ask you what you provided input on, or
8 comments on, as far as this amendment.

9 MR. GONZALES: Objection. I think you are
10 mischaracterizing her prior testimony.

11 A. Yes. As I said, I didn't sit and say,
12 "Oh, we need to change this or we need to change
13 that." I think in making questions, we may have
14 influenced some of the clarifications that are in
15 their addendum.

16 Q. Okay. And you suggested looking at the
17 document so I'm going to let you look at the document
18 and see if you can provide any more precision on
19 that.

20 A. I think monthly reports was an area that
21 would have come out of our discussions. There are
22 other things, too, that -- oh, the SVRX third-party
23 royalties was probably --

24 Q. What are you looking at?

25 A. Section 2. In other words, some of the

1 amendments to Section 4.16.

2 Q. What page are you looking at?

3 A. Six.

4 Q. Page six of Amendment 1?

5 A. Uh-huh (affirmative).

6 Q. And you are looking at Section J?

7 A. No. Above that.

8 Q. Section I?

9 A. Yes.

10 Q. Can you read the provision you're talking
11 about?

12 A. It says, "The following is added at the
13 end before the period: ... together with a
14 remittance sufficient to cover applicable third party
15 payments (if any) which are attributable to
16 distributions giving rise to such SVRX Royalties (and
17 royalties from Royalty-Bearing Products) and for
18 which Buyer has assumed Seller's obligation of
19 payment to such third party."

20 Q. So you are looking at Section I(2)?

21 A. That is correct.

22 Q. And what were the discussions you had on
23 that point?

24 A. Well, the original -- within any
25 technology there is often other technology that does

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1 plans -- some of the transition plans in general. I
2 mean, it's hard at a large, all-hands meeting, to get
3 into huge specifics. Because not everybody is
4 interested in every aspect.

5 And then we broke into smaller groupings
6 for the specific areas. I know the engineers had
7 meetings in regards to what needed to happen for
8 their various segments. Product management did the
9 same. Finance did the same. So we had a lot of very
10 smaller groups and then we would meet in bigger
11 groups and then there would be all-hands meetings.
12 It's hard to really state.

13 Q. Can you focus on this meeting that you
14 referred to? That's what I'm asking you about.

15 A. Basically just a big generalized meeting
16 in which we were told that the product line was being
17 sold to SCO.

18 Q. You say "in this meeting," you are
19 referring to a specific meeting, you said that terms
20 of the APA and Amendment Number 1 were explained?

21 A. It was very generalized. Once again, as
22 stated, at an all-hands meeting you are not going to
23 explain in minute detail all of the terms and
24 conditions of a sale. An all-hands meeting is going
25 to be basically what is it that people want to hear.

1 The majority of it is going to be are they employed
2 or not.

3 Q. Can you recall any other -- I'll strike
4 that.

5 Can you recall any terms of the APA that
6 were discussed?

7 A. Probably more just generalized terms.

8 Q. What was said?

9 A. Just saying generalized terms. I don't
10 know specifically clauses. It's been ten years or
11 more.

12 Q. What about of Amendment 1; anything you
13 remember being discussed in that meeting about the
14 terms of Amendment 1?

15 A. No. Not necessarily. It would have been
16 in broad strokes. They wouldn't have referenced
17 specific page and line items of an agreement.

18 Q. What about generally; do you remember what
19 was said about the terms of Amendment 1?

20 A. I'm not sure on employment what goes from
21 Amendment 1 into the other. I don't even know if --
22 potentially Amendment 1, I don't think actually was
23 signed at that point. I may have generalized a
24 little too much in this statement.

25 Q. Do you remember if, in this meeting, this

1 all-hands company-wide meeting, do you remember
2 whether anything was discussed about SVRX royalties?

3 A. I seriously doubt if they would have
4 gotten that specific at an all-hands meeting.

5 Q. So do you remember it being discussed?

6 A. No. Maybe in general just that there were
7 different items transitioning to SCO and some
8 remaining with Novell.

9 Q. Do you remember what was said about what
10 SCO would get and what Novell would retain?

11 A. No. It's hard to segregate, it's ten
12 years since these meetings occurred, what
13 specifically occurred at which meeting. And if they
14 did it at an all-hands meeting, they are not going to
15 get into a line-by-line detail of an agreement.

16 Q. Did you take any notes at this meeting?

17 A. Not that I remember.

18 Q. Were there any presentation materials?

19 A. Possibly.

20 Q. Do you remember any?

21 A. Not really.

22 Q. Any visual aids, do you remember?

23 A. They usually tended to use them, so I
24 would assume that they did. But I don't remember any
25 specifically.

1 Q. Okay. Then in the -- who made the
2 presentation at this company-wide all-hands meeting?

3 A. There were several people. There was HR.
4 There was Vice-President of Development. I can't
5 think of the guy's name. I can't think of him. I
6 think there was also, at that point -- no. Never
7 mind. But just basically HR people to answer
8 questions. And there was, as I said, there was the
9 vice-president, I can't think of his name at the
10 moment, and some other people. I think they flew in
11 some of the people from Novell out of Utah or
12 California at the time. I don't remember who,
13 though. Quite frankly, I usually didn't know them
14 because I never met with them.

15 Q. Okay. You then say in your declaration,
16 paragraph 5, "After I became a Santa Cruz employee, I
17 also attended a number of meetings with both Novell
18 and Santa Cruz participants in which the terms of the
19 APA were explained."

20 Can you tell me what meetings you recall
21 in which the terms of the APA were explained?

22 A. These were the Novell transition meetings.

23 Q. And tell me how many there were, where
24 were they, when were they?

25 A. They were usually on Novell's premises.

1 This was prior to our splitting up into separate
2 areas of the building. It was usually in Novell's
3 premises. I remember a lot of them occurring in Stu
4 Adams's office, several of them occurring in
5 conference rooms. They were on an as-needed basis.
6 So they were usually one or more times a week.

7 Q. For what time period?

8 A. The first couple of months after this APA
9 was signed and the announcement was made.

10 Q. And who do you remember attending any of
11 these meetings?

12 A. Various people. As I said, Stu Adamson
13 [sic] was the assistant controller for the New Jersey
14 location under Novell, usually spearheaded them.
15 Sandy Matheson from Novell in California, I think she
16 was in that office, she would attend via
17 teleconference. She had a team of people out there.
18 I don't know who. People on the order of Terry would
19 sometimes sit in, although usually I was doing more
20 of the liaison work there. Cindy, Barb, various
21 people would kind of come and go on an as-needed
22 basis. There were some of the general ledger people
23 from Novell there, because it wasn't just the
24 administration that was being discussed. There was
25 also the fixed assets, employees, pay, transition of

1 various assets and liabilities, although not so much
2 the liabilities. But, well, and also kind of pricing
3 on things.

4 Q. Can you give me an idea of how many
5 meetings you're referring to in this second sentence
6 of paragraph 5 of your declaration?

7 A. Quite a few.

8 Q. Yeah. How many is that, approximately?

9 A. I don't know. Maybe for a couple of
10 months at least once or twice a week.

11 Q. How many meetings in which the terms of
12 the APA were explained?

13 A. That was usually the topic of discussion.

14 Q. Okay.

15 A. Because the APA was the guiding document
16 for all of the transition between the companies.

17 Q. And can you remember anything being said
18 in these meetings about the SVRX royalties?

19 A. Not so much there as more towards the
20 point where we actually were doing the
21 administration. And then that ended up more as part
22 of the meetings with the Barb, Cindy, myself, and
23 Terry, monthly meetings or more.

24 These other meetings were more how to
25 transition things like computer systems, how to copy

1 database histories.

2 Q. Okay. Ms. Acheson, if you'd look at
3 paragraph 5, the second sentence.

4 A. Uh-huh (affirmative).

5 Q. You're referring to a number of meetings.

6 A. Uh-huh (affirmative).

7 Q. With both Novell and Santa Cruz
8 participants, right?

9 A. Yes.

10 Q. In which the terms of the APA were
11 explained?

12 A. Yes.

13 Q. I don't know what meetings those were.
14 Only you do.

15 A. Right.

16 Q. In any of those meetings were the SVRX
17 royalties discussed?

18 A. Yes. There was some discussions about
19 some of the mechanics which, you know, because as
20 stated before, the APA had been written at a very
21 high level, which was necessary in order to keep
22 everything highly confidential. So when trying to
23 figure out the mechanics of some of it, it becomes a
24 little hard to interpret what's going on with the
25 actual reality of day-to-day processing of

1 transactions. So as stated, there were some
2 refinements such as like for third-party royalties,
3 services fees, things on that order.

4 Q. Can you recall any discussions in these
5 meetings about what portion of the SVRX royalties
6 Novell would be entitled to versus what portion SCO
7 would be entitled to?

8 MR. GONZALEZ: Objection to form.

9 A. Not really. Because it was more
10 understood, I think at that time, what SVRX royalties
11 meant.

12 Q. Was there any discussion in these meetings
13 about what royalties SCO would retain versus what
14 royalties Novell would retain?

15 MR. GONZALEZ: Objection to form.

16 A. Could you be more specific?

17 Q. Yeah. In these meetings that you're
18 referring to, was there any discussion about what
19 portion of the royalties SCO was going to administer
20 would belong to Novell versus belong to SCO?

21 A. That's kind of hard to answer because,
22 once again, at that point in time people knew the
23 product lines pretty well between the companies. So
24 it was understood that UnixWare was SCO's product,
25 that that was being -- was the ongoing development

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1 after the closing date of the APA?

2 MR. PERNICK: Objection. Vague.

3 A. The physical agreements?

4 Q. Yes.

5 MR. PERNICK: Same objection. Calls for
6 speculation.

7 A. We had them all actually scanned into an
8 imaging system, and the imaging system was
9 transferred to SCO.

10 Q. And how about the relationships with those
11 licensees for UnixWare and SVRX products? What
12 happened to those after the closing date of the APA?

13 A. Well, all customer agreements were, in
14 regards to the UNIX business, were transferred to SCO
15 and so was the relationship with the customer. We
16 were the ones who, you know, letters were sent out
17 from Novell instructing the customers to send all
18 future payments to SCO and any royalty reports or
19 anything else that they needed to do to exercise
20 their requirements under the various agreements.

21 Q. Do you recall Mr. Pernick asking you about
22 conversations that you had as part of the transition
23 team --

24 A. Yes.

25 Q. -- during the time of the APA?

1 A. Yes.

2 Q. Do you recall him also asking you about a
3 company-wide meeting that took place around the time
4 of the APA at Novell?

5 A. Yes.

6 Q. Do you recall any other communications by
7 Novell management involving Novell management where
8 the APA transaction was explained to Novell
9 employees?

10 MR. PERNICK: Objection. Lacks
11 foundation. Leading.

12 A. The very first announcement was a world-
13 wide I guess conference call by Mr. Frankenberg where
14 he announced that basically the product line had been
15 sold; that Novell wanted to return to its core
16 competency of NetWare. And that -- I believe at that
17 one he basically stated that the UNIX product line
18 had been sold to SCO, and that the other products
19 were being sold to various other companies.

20 MR. PERNICK: Move to strike.
21 Nonresponsive.

22 Q. I believe you also testified earlier that
23 there were also subsequent meetings among smaller
24 groups regarding the APA transaction. Do you recall
25 having those conversations with Mr. Pernick?

1 A. Yes. That was more like an all-hands
2 meeting at the various locations within Novell to
3 whom this APA affected.

4 Q. And then I also believe you told Mr.
5 Pernick earlier that subsequent to that, you also had
6 ongoing conversations with a smaller group of people,
7 I believe it was Cindy Lamont was one of them --

8 A. Yes.

9 Q. -- at Novell --

10 A. Yes.

11 Q. -- about how to implement the APA
12 provisions on a daily basis?

13 A. Right. Within the realm of finance.
14 Basically we broke up into smaller groups to handle
15 the various sections, responsibilities. There was
16 engineering, there was legal, there was finance.

17 MR. PERNICK: Move to strike.

18 Nonresponsive. The witness should try to answer the
19 questions.

20 Q. In thinking of all these communications,
21 starting with the announcement by Mr. Frankenberg --
22 actually, let me back up. Who was Mr. Frankenberg?

23 A. He was the CEO of Novell.

24 Q. So starting with that announcement and
25 thinking of the company-wide meeting you had, the

1 all-hands meetings that you discussed, and then your
2 ongoing communications with Ms. Lamont and others at
3 Novell, did you arrive at an understanding about what
4 were the basic terms of the APA?

5 MR. PERNICK: Objection to form. Lacks
6 foundation.

7 A. Yes. We basically learned that the UNIX
8 business was being sold to SCO; and customer
9 agreements, the products, the source code, the
10 intellectual property all went to SCO; and that in
11 executing this, SCO was paying, you know, a lump sum
12 of money and stock for the purchase; and that they
13 were not able to afford to buy out the binary royalty
14 stream, so while all of the customer relationships
15 and agreements did transfer to SCO, at the same time,
16 administrative arrangement had to be created so that
17 the binary royalty reports under SVRX were processed
18 and -- by SCO, since Novell couldn't do it at this
19 point, legally; and that we would then receive 5
20 percent of this revenue stream for our
21 administration, and 95 percent would be remitted to
22 Novell.

23 MR. PERNICK: Move to strike the
24 nonresponsive answer.

25 Q. What was -- if you would just answer the

1 immediate question that I'm asking you and then we
2 can -- I can follow up with questions, although I
3 appreciate you elaborating.

4 A. Okay.

5 Q. Can you summarize that answer? In other
6 words, based on all those communications that you had
7 involving Novell personnel and Novell management
8 around the time of the APA and after the closing,
9 what was your basic understanding of the basic terms
10 of what Novell had sold to Santa Cruz and what it had
11 retained, if anything?

12 MR. PERNICK: Objection. Vague. Lacks
13 foundation.

14 A. Basically Novell had sold the entire UNIX
15 product line and its assets, its intellectual
16 property, its contracts, the third-party royalty
17 agreements. There were other agreements. They were
18 all assigned to SCO and beyond that. And then there
19 was the administrative situation in order to handle
20 the binary royalties.

21 MR. PERNICK: Move to strike.

22 Q. So is your testimony that the only thing
23 that Novell retained out of the UNIX business was the
24 right to what you call the SVRX binary royalties?

25 MR. PERNICK: Objection. Lacks

1 foundation. Leading.

2 A. That is correct.

3 Q. Mr. Pernick asked you many questions about
4 instances when you or someone else at Novell or Santa
5 Cruz would have expressly stated that Novell did not
6 have a right after the sale under the APA to anything
7 other than what you call the binary royalty stream.
8 Do you recall those questions?

9 A. Yes, I do.

10 Q. And you stated a couple times that there
11 were some discussions; do you recall saying that?

12 MR. PERNICK: Objection to form.
13 Mischaracterizes testimony. Lacks foundation.
14 Leading.

15 A. Sorry. Could you repeat?

16 Q. I'm just trying to short-circuit this for
17 everybody. But based on his objections lets me walk
18 through everything and we will have to stay here
19 later.

20 A. Okay.

21 MR. GONZALEZ: But these are basic things
22 that she has already testified to before.

23 Q. (By Mr. Gonzalez) During these
24 communications that are the basis of your
25 understanding of the basic terms --

1 A. Yes.

2 Q. -- were there some discussions as to the
3 rights that Novell had retained under the APA?

4 A. Yes, I believe there were.

5 Q. And based on those discussions, what was
6 your understanding of what Novell had retained under
7 the APA?

8 MR. PERNICK: Objection. Lacks
9 foundation.

10 A. The SVRX binary royalty stream for the
11 customers that were existing at the time of the APA.

12 Q. Can you and I agree, just as a shorthand,
13 that what you have just described as what Novell
14 retained, we can just call that the binary royalty
15 stream just to make this a little shorter? Can we
16 have that agreement?

17 MR. PERNICK: Objection.

18 Q. Can we agree on that? Can you and I agree
19 on that, Ms. Acheson?

20 A. Yes.

21 Q. So when you hear me say the binary royalty
22 stream I will mean what I believe you just said: The
23 binary royalties from the existing customers at the
24 time of the APA.

25 A. That's fine.

1 Q. Okay. So during these communications that
2 you had which involved Novell people that are the
3 basis of your understanding of what Novell retained,
4 were there discussions with Novell people about that
5 subject matter of what Novell had retained?

6 MR. PERNICK: Objection. Vague. Lacks
7 foundation.

8 A. Yes.

9 Q. And who were some of those people?

10 A. Cindy Lamont, Barb Cavalla, Terry Dulin.

11 Q. Those three names you just mentioned,
12 which meetings would those have --

13 A. Those were usually --

14 Q. -- would those have occurred?

15 A. Those were usually more specific
16 agreements around the reporting of the royalties to
17 Novell.

18 Q. Going back a little further in time. When
19 you were meeting with the transition team, were there
20 discussions about the rights that Novell had retained
21 under the APA, namely this binary royalty stream?

22 A. Among other things, yes, I believe there
23 was some. It was just very generalized because, once
24 again, this was just sort of an understood point.

25 MR. PERNICK: Move to strike.

1 Nonresponsive.

2 Q. And when you testified just now and
3 earlier today that this was something that everybody
4 understood, what do you mean by that, more precisely?

5 A. Because in the explanations it was
6 basically understood that while the entire product
7 line went to SCO, including the customer
8 relationships, the customer agreements, the
9 third-party royalties, joint development
10 arrangements, the products, the source code tapes for
11 the entire hierarchy of products, the intellectual
12 property and stuff, it was just understood that the
13 one thing that SCO was unable to purchase from Novell
14 was this ongoing SRVX revenue stream.

15 Q. And so besides your conversations with Ms.
16 Lamont and Ms. Dulin and Ms. Cavalla -- is that the
17 name?

18 A. Yes.

19 Q. Were there other conversations about what
20 Novell had retained during the transition team
21 meetings, for example?

22 A. Yes, there probably was.

23 Q. And were there conversations or
24 communications about that same subject matter, namely
25 what Novell had retained, during the company-wide

1 meeting at Novell?

2 MR. PERNICK: Objection to form. Vague.

3 A. That, I don't remember. I believe that
4 there was. That, once again, it was the entire
5 product line, but that there were segments where we
6 were going to have a continued relationship with
7 Novell.

8 MR. PERNICK: Move to strike.
9 Nonresponsive.

10 Q. When you say "continued relationship with
11 Novell," what do you mean by that?

12 A. Well, that NetWare was going to be
13 embedded within the UnixWare code. And the
14 relationship, the administrative relationship between
15 the two companies for the processing of the binary
16 royalty, SVRX binary royalty stream.

17 Q. Do you recall Mr. Pernick asking you about
18 whether there were communications during these
19 meetings around the time of the APA that involved
20 Novell, communications about -- strike that. Let me
21 simplify that.

22 Focusing again on the meetings that
23 occurred with Novell or at Novell during the time of
24 the APA, Mr. Pernick asked you if there was ever a
25 discussion as to who would have the rights to the

1 A. He probably didn't say the word "binary."
2 But if he said "royalties," that's what everybody
3 would have basically assumed.

4 Q. And he said -- I'm sorry?

5 A. It's all right. Continue.

6 Q. And he said that Novell would not be
7 entitled to royalty streams from any licenses entered
8 into after the APA?

9 A. I do not believe he would have said it in
10 that particular way. I think he basically stated
11 that the business had been sold to SCO and that it
12 belonged to SCO, with the exception of, you know, the
13 NetWare in UnixWare and this, you know, the binary --
14 the royalties for the ongoing royalty revenues.

15 Q. And he limited, in what he said, he
16 limited what Novell was entitled to to the royalties
17 from licenses that were in existence at the time?

18 A. Yes. Because it was the ongoing revenue
19 stream which SCO could not afford to purchase.

20 Q. What were his words that you recall?

21 A. Oh, I don't remember specific words, but I
22 just remember the general discussions. I don't
23 remember exactly the discussions as to who was going
24 where and who was hiring. But I remember that that
25 was also part of the meeting.

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1 Q. Do you remember who this person was?

2 A. No. I can't remember his name. I
3 remember he was shorter than I am and he was an older
4 gentleman.

5 Q. Did you see him live?

6 A. Yes. He was one of the V.P.s that was at
7 the Florham Park Novell.

8 Q. And this was one of the company-wide
9 meetings you were talking about?

10 A. Well, it was company-wide, meaning the
11 company, the piece at Florham Park.

12 Q. Is this the company-wide meeting you
13 referred to in paragraph 5 of your declaration?

14 A. Which number was that, please?

15 Q. I think it's 112. It would have been the
16 first one we marked today. I don't know if they are
17 in order.

18 A. It is. We had put them in order. I just
19 went by it.

20 Yes. That's the one.

21 Q. Okay. And then you've referred to some
22 transition team meetings, too; is that right?

23 A. Yes.

24 Q. And in any of those meetings, did anyone
25 from Novell say that Novell's rights to SVRX

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1 royalties would be limited to binary royalties from
2 licenses in existence at the time of the APA?

3 A. Once again, it was a grouping of people.
4 A lot of various things were discussed. And to me
5 the understanding of these discussions was that SCO
6 had purchased the entire product line: Customer
7 relations, third-party royalty agreements, joint
8 development, the IP, the source code tapes for the
9 entire UNIX product line, and that with the exception
10 that they could not afford to buy out the ongoing
11 royalty stream which, to better define it now, is the
12 binary revenue royalty stream for the existing SVRX
13 customers at the time of the APA.

14 Q. Okay. I know you say that was the
15 understanding that you had. But do you remember
16 anyone saying that?

17 A. It must have been, because that's how we
18 understood it.

19 Q. But do you remember anyone saying it?

20 A. No. I have stated all along I don't
21 remember any particular person stating that within
22 the meetings.

23 Q. It was just the understanding?

24 A. Yes. It was discussions and
25 understandings.

1 Q. Do you know why no one put it into the
2 APA?

3 MR. GONZALEZ: Objection.

4 A. I believe it was in the APA.

5 MR. GONZALEZ: I object to that.

6 A. I'm not an attorney, but I have been
7 working under the APA as it has been discussed and
8 described to me by my management, and throughout
9 these meetings.

10 Q. And we have been going for a while today.
11 Have you had any new recollections as to provisions
12 in the APA that state that understanding?

13 A. No. I believe I have already pointed them
14 out in my previous testimony.

15 Q. Did Cindy Lamont ever say that she
16 believed that Novell's rights to SVRX royalties would
17 be limited to binary royalties from licenses in
18 existence at the time of the APA?

19 A. Well, I do not believe she ever stated it
20 100 percent like that. She, as well as Barb Cavalla,
21 worked with me to develop the reports, and never was
22 a section put in for source code or for category of
23 product. You don't even really see that something
24 that I'm reporting is SVRX binary fees.

25 Q. Come again?

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REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Diana Kent, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, the witness, JEAN ACHESON, was by me duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in stenotype on March 20, 2007, at the place therein named, and was thereafter transcribed and that a true and correct transcription of said testimony is set forth in the preceding pages;.

I further certify that, in accordance with Rule 30(e), a request having been made to review the transcript, a reading copy was sent to Jean Acheson for the witness to read and sign before a notary public and then return to me for filing with Attorney Mark Pernick.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 30th day of March, 2007.

Diana Kent, RPR, CRR
Notary Public
Residing in Salt Lake County