

# EXHIBIT 17A

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC., : Case No. 2:04CV00139  
:  
Plaintiff, : Videotaped Deposition of:  
:  
vs. : TY MATTINGLY  
:  
NOVELL, INC., :  
:  
Defendant. :  
:

January 19, 2007 - 9:23 a.m.

Location: SCO Group  
355 South 520 West  
Lindon, Utah 84042

COPY

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

1       A.   Well, they -- from the time I was hired to the end  
2 of my first day they had changed, so it started out to be  
3 marketing of the print server, and then it evolved very  
4 quickly over to electronic software licensing.

5       Q.   And what is electronic software licensing?

6       A.   That's basically the notion of taking Novell's  
7 software that we distributed and actually having a technical  
8 licensing capability so that we would sell the single  
9 product.  And then they could enter a key, and based upon  
10 that key, it would unlock certain privileges inside of the  
11 operating system like numbers of users, etc.

12      Q.   Okay.

13      A.   So really nice technology to help on the cost  
14 reduction side.

15      Q.   Did that involve the licensing of source code?

16      A.   It did not.

17      Q.   Were you involved at all with the licensing of  
18 source code at all during your tenure at Novell?

19      A.   Not directly in the sense that I was viewed as  
20 someone that was the licensor of source code, but, you know,  
21 later on in my tenure as vice president of corporate  
22 development and strategic relationships we were involved with  
23 acquisitions and divestitures.  Acquisitions and divestitures  
24 were always based upon some software company that could help  
25 Novell.

1 Q. Uh-huh. I think you said you joined as senior  
2 product manager. When did your title change? What did it  
3 change to?

4 A. I think the first change in it was probably a year  
5 later when Ray Noorda basically hired me to work directly for  
6 him, and Ray Noorda was the then chairman and CEO and founder  
7 of Novell.

8 Q. In what capacity did he hire you to work for him?

9 A. Title was executive director, office of the  
10 chairman.

11 Q. What were your responsibilities?

12 A. To be his right-hand man and gopher and body guard  
13 and --

14 Q. Okay. How long did you hold that title?

15 A. I probably worked for Ray for about two years.

16 Q. Okay. And what was your next title at Novell?

17 A. Basically kept the same title, and then when Ray  
18 retired, I worked in that same capacity for Bob Frankenberg.

19 Q. Uh-huh.

20 A. Who was his successor.

21 Q. And until what time did you do that?

22 A. I probably worked for Bob for maybe 18 months.  
23 Yeah, probably about 18 months.

24 Q. So it started at some point in 1995, your  
25 responsibilities for Mr. Frankenberg?

1 A. It sounds about right.

2 Q. Let me ask it a different way. Can you recall with  
3 any specificity either when you began working --

4 A. Exactly.

5 Q. -- in that capacity or when you stopped working?

6 A. The day he was hired --

7 Q. Oh, okay.

8 A. -- is when I started work working for Bob  
9 Frankenberg, so I don't know exactly what day that was. So I  
10 remained in that transition through the transition of the new  
11 CEO and remained in that position until I left about a year  
12 and a half later and started working for Duff Thompson.

13 Q. Uh-huh.

14 A. And in that position and title I was vice president  
15 of corporate development and strategic relationships.

16 Q. And when did your responsibilities in connection  
17 with Mr. Thompson begin?

18 A. Well, probably about '96 time frame. Roughly, I  
19 think it was about a year and a half with Bob Frankenberg.

20 Q. And the responsibilities you had in connection with  
21 your work with Mr. Frankenberg were similar to the work you  
22 had done with Mr. Noorda?

23 A. Correct.

24 Q. And when did you leave Novell?

25 A. Well, I actually left Novell probably in '97, but

1 that was to go to a joint venture that Novell created with  
2 Netscape called Novonyx, N-O-V-O-N-Y-X.

3 Q. How long did you work at Novonyx?

4 A. About a year.

5 Q. And then what?

6 A. Novell basically acquired all of the equity in  
7 Novonyx, pulled that back into Novell, and that's when I had  
8 my severance agreement and left Novonyx.

9 Q. Okay. What did you do at Novonyx?

10 A. Sales and marketing.

11 Q. And if you could take a minute to summarize the  
12 kind of work you have done since you left Novonyx.

13 A. We started a consulting company. I knew that I did  
14 not like hardware from my IBM days and did not like software  
15 from my Novell days, and so thought I would get into the  
16 consulting where we just talked about both of those things.  
17 And we started a Internet consulting firm right when the  
18 Internet was all of the rage in about '98. And basically  
19 myself and a couple of others founded that company, and we  
20 built it and sold it in 2004.

21 Q. What was the name of that company?

22 A. It was SBI Razorfish, R-A-Z-O-R-F-I-S-H.

23 Q. And what were your responsibilities with SBI  
24 Razorfish?

25 A. Corporate development.

1 not successful there, but marrying two completely different  
2 architectures --

3 Q. Uh-huh.

4 A. -- into a single elegant architecture that you  
5 could now offer to people to create new applications on and  
6 to move those installed bases along is a pretty complex task.  
7 And ultimately I think Novell was successful in creating  
8 those products, but in doing that, there was a lot of angst,  
9 a lot of internal fighting, a lot of struggle with how you  
10 position those different operating environments inside of  
11 Novell.

12 Q. Was there a SuperNOS product that was actually  
13 released by Novell?

14 A. No, no. We had -- I think we had some working, you  
15 know, prototypes. We had a couple of different architectural  
16 approaches that two different teams had created.

17 Q. Uh-huh.

18 A. One integrating them tightly and one kind of trying  
19 to have them run side by side in a coexistence type of a  
20 fashion, and ultimately we didn't take any of those to  
21 market.

22 Q. When you first got wind of a potential sale of the  
23 Unix assets, did you have a view as to whether it was a good  
24 idea or a bad idea? Somewhere in the middle?

25 A. Well, you know, I would have to say that I joined

1 the company because I believed they were putting the  
2 application development environment inside of NetWare. Unix  
3 was that environment. It was just pure agony inside of the  
4 company trying to work between, you know, Provo, Utah and  
5 Summit, New Jersey.

6           And ultimately when we sold that, yeah, I felt like  
7 it probably wasn't the best thing to do, but the big issue at  
8 those times were, you know, you can only invest so many  
9 dollars in so many different things. And you know, we had to  
10 draw the line. We had to choose, and the belief was, we  
11 couldn't take and market fully a NetWare, as well as market a  
12 UnixWare, as well as market potentially an integrated  
13 SuperNOS type of a product.

14       Q.    Uh-huh.

15       A.    So the strategy inside of the company was at the  
16 highest of levels, which was Bob Frankenberg to say, Hey, we  
17 need to find a home for this.

18       Q.    And if you can recall at the time you first got  
19 wind of this potential sale of the Unix assets, with whom  
20 were you working at that point?

21       A.    I was working for Duff Thompson.

22       Q.    I take it you had occasion to discuss the issue of  
23 a potential sale of the Unix assets with Mr. Thompson?

24       A.    Amongst others.

25       Q.    Who were the others?



1       A.    Well, I mean, Bob Frankenberg obviously as the  
2 chairman and CEO of the company. I mean, that's the type of  
3 decision that goes up to his level. There were discussions  
4 with people inside of the different product groups, as well  
5 as other members of ultimately the deal team that were put  
6 together that managed the divestiture.

7       Q.    Who were some of the individuals in the product  
8 groups that you have in mind, if you can recall?

9       A.    Well, I think -- I think -- and I don't know who  
10 was whose boss. But Richard King, I think, was the executive  
11 vice president of the NetWare products division. Mike  
12 DeFazio, I think was the -- I don't know if we called him the  
13 senior or executive vice president of the Unix division.  
14 Those would have been the primary product group executives  
15 that we worked with.

16       Q.    And you mentioned the deal team. Who was on the  
17 deal team?

18       A.    Well, from a corporate development perspective, I  
19 was part of that deal team as the strategic relations person,  
20 and then Ed Chatlos was my counterpart who was in the  
21 corporate development side of Duff's organization. He was  
22 also the person that was assigned as the corporate  
23 development executive for the product group.

24       Q.    Anyone else that you can recall who was on the deal  
25 team?

1 VIDEOGRAPHER: Going back on the record. The time  
2 is 10:07.

3 Q. (By Mr. Normand) Mr. Mattingly, do you recall  
4 considering during the APA negotiations the issue of the Unix  
5 copyrights?

6 MR. BRAKEBILL: Objection, vague and ambiguous.

7 THE WITNESS: So what does that mean?

8 MR. BRAKEBILL: Oh, we should probably say this.

9 During the course of the deposition I will make objections as  
10 to the question just to preserve the record, but you can go  
11 ahead and answer the question.

12 THE WITNESS: Okay.

13 MR. BRAKEBILL: Unless it's a privilege issue that  
14 comes up due to your tenure at Novell.

15 THE WITNESS: Uh-huh.

16 MR. BRAKEBILL: We can consider it, and if  
17 necessary either answer or not answer.

18 A. Okay. You want to give me a little more  
19 specificity?

20 Q. (By Mr. Normand) Did you have an understanding  
21 during the course of the APA negotiations as to whether  
22 Novell owned copyrights in its Unix business?

23 A. Yeah. Clearly Novell owned copyrights. We bought  
24 Unix Systems Labs from AT&T for some 300 plus million  
25 dollars. So, yeah, we owned the Unix business, lock, stock

1 and barrel, and it was the Unix business that we divested to  
2 SCO.

3 Q. And can you recall considering specifically the  
4 issue of Unix copyrights during the course of the APA  
5 negotiations? When I say you, I mean you personally.

6 A. You know, I, personally do not recall sitting there  
7 saying, yes. The Unix copyrights are part of this  
8 lock-stock-and-barrel Unix business that we are selling. But  
9 once again, I think it's important to understand that at the  
10 high level, that's where I was involved.

11 The detail level would be more Ed Chatlos, but at  
12 the highest level, the intention was that we were exiting the  
13 Unix business and selling that business to SCO so that they  
14 could pick up, unify the industry around Unix on X-86.

15 Q. Do you know whether in this case Novell is  
16 asserting that the copyrights were not transferred?

17 A. Well, I mean, I have read enough about the case  
18 early on. I haven't stayed real current lately. But I mean,  
19 obviously we're here today because Novell is asserting that  
20 the copyrights were not sold with the Unix business to SCO,  
21 and obviously SCO would assert that they purchased the Unix  
22 business from us lock, stock and barrel.

23 Q. And do you have a view as to the merits of Novell's  
24 assertion, such as you understand it?

25 A. I do.

1 Q. And what is your view?

2 A. Well, my firm belief is that we sold the Unix  
3 business to SCO, and that is why SCO paid us roughly 125  
4 million dollars at that point because they bought the Unix  
5 business from us basically in its entirety.

6 The only things that did not go with that was a  
7 kind of an agent relationship whereby SCO was collecting the  
8 SVRX royalties from existing OEMs at the time we sold that  
9 business and then giving the bulk of those moneys back to  
10 Novell. So that piece of the business, if you will, Novell  
11 maintained the royalty stream base of that going forward, and  
12 SCO acted as Novell's agent there for a very good reason.

13 And that is that SCO wanted to create the  
14 relationships with those OEMs and move them from those  
15 existing licenses to their new UnixWare platform on X-86.  
16 That was basically the strategy that we wanted, and that was  
17 a rational approach for them to actually begin to create the  
18 relationships, associations, ties with those OEMs that they  
19 aspired to move. And we wanted them to move those OEM  
20 relationships over to UnixWare.

21 Q. Why did you want them to do that?

22 A. Well, remember the strategy. The strategy was  
23 about, how do we set up an alternative application platform  
24 out there in the industry that all of the -- what were  
25 existing minicomputer, microcomputer, mid-range computer RISC

1 concern that if SCO had that, and if you met a certain  
2 requirement for Unix, we wanted everyone in the industry to  
3 be able to call it HP Unix, Sun Unix. And the concern at  
4 that time was that SCO might restrict everyone so that they  
5 would have some advantage out in the marketplace of saying,  
6 hey, we're the only true Unix.

7           And so we took the branding and the ability for you  
8 to brand your product as Unix and pushed that off to X/Open,  
9 which was a consortium at the time, and basically they had  
10 the charter of, if you meet these requirements, then you can  
11 actually use the Unix brand with your product offering.

12           So those would be -- those would be the things that  
13 come to mind for me is the right to some technology they  
14 might bundle, the rights to those royalty streams from the  
15 SVRX licenses, and the brand was pushed off to this X/Open  
16 group.

17           But once again, think about the strategy. Why  
18 would we do that is consistent with trying to make SCO  
19 basically this company that would -- that people would rally  
20 around for this Unix offering on Intel.

21           Q.    You mentioned HP earlier as a company that was  
22 involved in the APA negotiations. Were you involved with HP  
23 at all?

24           A.    I was.

25           Q.    And to what extent were you involved?

1           A.    Well, we would periodically meet with the HP team  
2 as well and update them on where we were, and it was really  
3 an interesting negotiation because we were negotiating with  
4 SCO.  Then we would go meet and kind of negotiate with HP on  
5 kind of what we're trying to do to make sure we still  
6 believed we could get broad support for OEMs in the way we  
7 were divesting of the asset.

8                   And at times we would go back and meet with SCO and  
9 maybe have to retract a little bit and tweak a little bit  
10 kind of the strategy to make sure that we were aligned with  
11 this overall strategy of, will OEMs rally around SCO for this  
12 new Unix offering.

13           **Q.    And can you recall who was on the HP team?**

14           A.    The senior executives, Wim Rollant was the senior  
15 executive.  Don't ask me how you spell that name.  Wim  
16 Rollant, and then he had a French guy that lived over in  
17 Belgium that was really responsible for it also.  I can't  
18 think of his name.  Tough one.

19           **Q.    Okay.  Did there come a time in 1995 when you  
20 learned that Novell and Santa Cruz were negotiating an  
21 amendment to the APA?**

22           A.    No.  I think it's important to understand that my  
23 involvement was up front in divesting the business.  Really  
24 when it comes to this asset purchase agreement and follow-on  
25 amendments, that would have been the folks that were more

1 involved from the corporate development side. I would assume  
2 it would be Ed Chatlos that would have done that.

3 VIDEOPHOTOGRAPHER: Five minutes, Counsel.

4 Q. (By Mr. Normand) Was there a transition team  
5 created at Novell to work with SCO after the execution of the  
6 APA?

7 A. There was. I was not a member of the transition  
8 team.

9 Q. Do you know who the principal members were?

10 A. Well, I don't. I mean, I could guess if you want  
11 me to but --

12 Q. No. That's fine.

13 A. Okay.

14 Q. Was there any work that you would describe as  
15 transition-type work that you did after the execution of the  
16 APA?

17 A. Not necessarily. I mean, there may have been, you  
18 know, some hand holding with HP and other OEMs. I really had  
19 very little to do with SCO post that divestiture. I mean, in  
20 my job I was off to the next thing.

21 Q. I take it you weren't involved with overseeing  
22 these payments that were being remitted to Novell?

23 A. I was not. I assume that would be an accounting  
24 function as well as a, you know, possibly some -- well, for  
25 us it would have been just an accounting function. From SCO,

1 I assume they might have had some product group involvement  
2 where they were trying to create these relationships.

3 Q. Is there anyone in particular from Novell that to  
4 the best of your recollection might have been involved in  
5 that work?

6 A. I can't think of anyone that -- it's an accounting  
7 issue, collecting.

8 MR. NORMAND: Why don't we take maybe just a five  
9 minute break?

10 MR. BRAKEBILL: Sure.

11 MR. NORMAND: Just for the tape, and if you want to  
12 stand up.

13 VIDEOGRAPHER: Going off the record. The time is  
14 10:28. This is the end of Tape No. 1.

15 (Recess.)

16 VIDEOGRAPHER: Going back on the record. The time  
17 is 10:37. This is the beginning of Tape No. 2.

18 Q. (By Mr. Normand) Mr. Mattingly, I think you said  
19 before the break that you were not particularly involved with  
20 SCO after the execution of the APA. Is that a fair  
21 description of what you said?

22 A. I think that's a fair statement.

23 Q. So I want to ask you a few questions, but it may  
24 be, given that statement, that it won't take long.

25 A. Okay.



1 sale of UnixWare technology as more fully set forth in the  
2 asset purchase agreement. So that seems to be consistent.

3 Q. Okay. In that same paragraph there's a reference  
4 in the preceding sentence to 95 percent of the SVRX  
5 royalties. Do you see that phrasing?

6 A. Uh-huh, uh-huh.

7 Q. What did you understand that to mean?

8 A. Well, at the time we sold the business, Novell had  
9 a number of existing SVRX OEMs that were predominantly these  
10 minicomputer OEMs.

11 Q. Yeah.

12 A. And with respect to those people, and I guess you  
13 can see down below who the big ones must have been, because  
14 we had this right of first refusal on Sun Microsystems,  
15 Microsoft, Hewlett-Packard, IBM, Digital and Fujitsu, so  
16 those likely were some of the big licensees.

17 And the intent there was to, you know, is for SCO  
18 to collect all of those existing SVRX royalty streams and  
19 then pay Novell 95 percent of that and keep 5 percent as an  
20 administrative fee.

21 Q. The minutes say that -- I'm looking now back at  
22 page 1 at the end of the last paragraph on page 1. The  
23 minutes say that you answered questions from the board. Do  
24 you recall any of the questions?

25 A. You know, I don't. But I mean, as usual, I mean,

1 you take a grilling in these types of meetings, and so I'm  
2 sure I was grilled by the board, asking all of the obvious  
3 questions that yes, we had thought of and --

4 Q. But nothing in particular comes to mind?

5 A. Not really. I mean, it's been a long time.

6 Q. The minutes say on page 2 in the paragraph that's  
7 actually squared off.

8 A. Uh-huh.

9 Q. And as a side note, that's just how the document  
10 was produced. They say, quote, Novell will retain all of its  
11 patents, copyrights and trademarks, open parens, except for  
12 the trademarks Unix and UnixWare, close parens. The sentence  
13 goes on, but that's the phrase I want to focus on.

14 Do you recall the issue of copyrights being  
15 discussed at the meeting?

16 A. You know, I don't. I mean, here where it talks  
17 about the trademark Unix and UnixWare, that goes to the  
18 naming convention that we talked about earlier, which was,  
19 didn't want SCO to be able to not grant the ability to call  
20 an EOM's product Unix if they met the certain specifications,  
21 and so that's why that was not retained by Novell. It was  
22 also not transferred to SCO because that was the piece that  
23 was moved over to X/Open.

24 Q. Uh-huh. With respect to the reference to  
25 copyrights, was it your understanding that Novell was

1 retaining all of the Unix and NetWare copyrights?

2 A. Not the Unix copyrights, but Novell clearly -- and  
3 you asked this earlier. Novell would not have transferred  
4 any of their copyrights around NetWare and ZenWorks and  
5 GroupWise or any of those bundled products that Novell sold  
6 with UnixWare.

7 So I think, I think that's probably what that's  
8 getting to is that, hey, look. We're going to own all our  
9 intellectual property. They're going to own all of this,  
10 with the exception of the naming of Unix and then, of course,  
11 that 95 percent fee that you see above it.

12 Q. Is there anything else specific about this meeting  
13 that you can recall?

14 A. No. I mean, I remember those are always -- they're  
15 always tense meetings, and you know, when we got into that  
16 final discussion, I think as you would expect, you take a  
17 pretty thorough set of questioning from a number of directors  
18 just firing questions away at you, but --

19 Q. But nothing specific?

20 A. Nothing specific. I think we had, you know, the  
21 facts down pretty clearly at that point. And even though 12  
22 years later I'm not as good on the facts, I was pretty good  
23 back then.

24 Q. I think you said earlier that you were familiar  
25 with some of the issues arising out of these lawsuits from

1 reading press. Is that a fair description of what you said  
2 before?

3 A. Yeah, I think press and some of these, you know,  
4 hate SCO message boards and all that good stuff.

5 Q. You have been on those message boards?

6 A. I have looked at them back when they first -- back  
7 when the first shots across the bow went out.

8 Q. Are you familiar with a claim that's arisen in  
9 these litigations in which Novell claims the right to waive  
10 SCO's claims against IBM for alleged breaches of IBM's Unix  
11 agreements?

12 A. I am aware of that.

13 Q. And do you have a view from your experience in  
14 negotiating the APA as to the merits of that claim?

15 A. Well, I mean, my perspective on that is that, you  
16 know, quite honestly, Novell doesn't have any rights to do  
17 that. And I, personally, you know, look at this whole  
18 litigation between Novell and SCO and think it's absurd. I  
19 think it's unbelievable to me that, you know, a great company  
20 like Novell would suggest that somebody spent 125 million  
21 dollars and didn't buy this Unix business.

22 And then I don't know what the relationships or  
23 discussions are between Novell and IBM, and I don't know why  
24 they have done some of those things. I mean, I have been out  
25 of the company for, well, since 1998. So I don't have any

1 Q. It moves quick, doesn't it?

2 A. Well, NetWare took 50 diskettes, and we could have  
3 done that with one CD. So just the cost of goods savings, if  
4 we could have done that, would have been just tremendous.

5 Q. Have you had discussions with any attorney for  
6 Novell regarding this case?

7 A. Yes.

8 Q. And on how many occasions if you can recall?

9 A. Well, I mean, I think -- I think after the  
10 subpoenas came out, Jim Lundberg, who is an old neighbor, an  
11 old friend, an old work associate there at Novell, contacted  
12 me. And I was glad to hear that it was, you know, Jim that  
13 was calling me because I didn't know anyone in the Novell  
14 legal team. So I think we probably talked twice about  
15 getting together, and we did get together yesterday for  
16 probably an hour and a half.

17 Q. And are you comfortable telling me what basically  
18 you guys discussed?

19 A. Yeah, very comfortable. I had a severance  
20 agreement, which is, you know, something that I had reviewed  
21 and saw that I had this cooperation clause in there. And I'm  
22 really glad that they contacted me so that I could review  
23 that with them and make sure that there wasn't going to be  
24 any legal brouhaha that surfaced because of my, you know,  
25 participating in this deposition.

1 Q. So the discussion was focused on the severance  
2 agreement or the employment agreement that we discussed  
3 earlier?

4 A. Yeah, severance agreement, talked about old war  
5 stories, and then, you know, just asked for some  
6 clarification. And they shared that with me about the notion  
7 of attorney-client privilege information and how that might  
8 trickle through so --

9 Q. Let me ask you generally on that issue. In the  
10 course of --

11 A. Well, let me say --

12 Q. Sure.

13 A. -- just so we -- we didn't talk about the case at  
14 all. Didn't talk about -- I mean, I even asked about a copy  
15 of this document, and they said that they couldn't give to  
16 me. So that's why when you showed it to me today, I thought,  
17 good. I'd like to get a copy of that.

18 Q. Did you have occasion in '95 in the negotiations of  
19 the APA to discuss issues with counsel for Novell at the  
20 time?

21 A. In '95?

22 Q. Yeah.

23 A. You know, I participated in some of those  
24 discussions superficially because when we would have the big  
25 team meetings there were probably occasions when we would

1 have met with a Tor Braham, who is Wilson Sonsini's attorney  
2 that really represented Novell in almost all of our  
3 transactions back in that era.

4 I have met Michael Hoffman a couple of times who  
5 is, I think, one of the lead attorneys on the case, and then  
6 I am aware that there were some other attorneys from Summit  
7 that were probably involved, and I hate to say it. I don't  
8 even recall their names.

9 Q. Summit is Summit, New Jersey?

10 A. Summit, New Jersey.

11 Q. Was the Unix -- was Novell's Unix business sort of  
12 focussed in New Jersey or the licensing business?

13 A. Yeah. Well, yeah. AT&T Unix Systems Labs was  
14 there in Summit, New Jersey, which is what we acquired. So  
15 the bulk of that entity, the engineers, the architects, the  
16 executives, etc., you know, Mike DeFazio, Ed Chatlos all  
17 lived out there but were road warriors basically coming out  
18 to Provo and California quite a bit.

19 Q. Apart from the discussions we discussed with  
20 Mr. Lundberg, and I think it may have been just Mr. Lundberg,  
21 any other discussions with any other counsel for Novell?

22 A. No. I haven't had discussions with Novell on this  
23 matter or I think any matters since about '98 when I left.

24 Q. Do you consider yourself friends with anyone  
25 currently working at Novell?

1           A.    Oh, I've got lots at friends at Novell and still.  
2 You got to realize this is a small valley, and so you know,  
3 we want Novell to do well and flourish and keep giving people  
4 pay raises and buying homes and everything else.

5           Q.    Have you discussed this lawsuit with any former SCO  
6 or Novell employees?

7           A.    You know, probably from a cursory perspective. I  
8 mean, you know, I talk to Novell people, and I'll run into  
9 some old Novell -- actually attorneys at the gym. And you  
10 know, I have talked with some of those people, and if I run  
11 into, you know, other folks, I might, a -- you know, yeah,  
12 probably not a lot, just because it's not necessarily the  
13 topic of discussion for people. I think Linux is more of a  
14 topic of discussion when you run into Novell people than SCO.

15          Q.    Do you think your friendships with any of the  
16 people we have been discussing have affected your ability to  
17 testify truthfully today?

18          A.    Absolutely not. I mean, my friendships are on both  
19 sides of this table, and you know, I started my career out  
20 with IBM back in an era when IBM was just magical and it was  
21 like a family. So you know, I am a big IBM fan. I am a big  
22 Novell fan, and you know, from an SCO fan perspective, I  
23 mean, it's hard to say I am an SCO fan.

24                    But I do look at this specific situation that you  
25 are deposing me on, and I think, I think Novell -- I think



1 have heard of UnixWare 7 or something along those lines, but  
2 I really didn't stay that involved in all of their product  
3 releases after we divested of that asset. At that point the  
4 discussion had moved to the Internet and not to -- I mean,  
5 think about it.

6           Unix as an application platform, hey, the Internet  
7 was the only thing that we felt like had surfaced that was  
8 bigger than Microsoft, bigger than the industry, was the  
9 Internet. So was there a way to capture the nouveaux  
10 application, ISVs, via the Internet.

11           Q.    Uh-huh.

12           A.    And that's why our whole relationship thing changed  
13 and people like Netscape became our partners and, you know,  
14 Yahoo and content providers and things along those lines, so  
15 as a result, I didn't really pay much attention to what  
16 happened with the businesses that we sold off.

17           MR. NORMAND: Okay. I have no further questions.  
18 I don't know if you want to take a break or --

19           MR. BRAKEBILL: Yeah, I need to use the -- you  
20 don't have to put this on the record. We can take a break.

21           VIDEOGRAPHER: Going off the record. The time is  
22 11:22.

23           (Recess.)

24           VIDEOGRAPHER: Going back on the record. The time  
25 is 11:33.

1 EXAMINATION

2 BY MR. BRAKEBILL:

3 Q. Good morning, Mr. Mattingly.

4 A. Hello.

5 Q. This morning Mr. Normand on behalf of SCO was  
6 asking you a series of questions about your involvement in  
7 the negotiations concerning the asset purchase agreement  
8 between Santa Cruz and Novell. Do you recall the general  
9 discussion?

10 A. Correct, yes.

11 Q. And is it fair to say that your role in the  
12 negotiation for the Novell, Santa Cruz transaction related  
13 only to the high level business strategy?

14 MR. NORMAND: Objection to form.

15 A. That's correct.

16 Q. (By Mr. Brakebill) And is it a fair statement that  
17 you were not involved in the details of the legal document  
18 that was executed on September 19, 1995?

19 A. Yeah. I think that's accurate.

20 MR. NORMAND: Let me object to the form again, and  
21 if I can just mention that -- well, in theory you should  
22 pause for just a second so that I can make an objection.

23 THE WITNESS: Okay.

24 MR. NORMAND: I know that's hard to do, though.

25 A. Are you finished?

1 Q. (By Mr. Brakebill) Okay.

2 A. Yeah. I think all of the negotiations took place  
3 and all of the give and takes and the go-betweens, and then  
4 at the end of that, you catch up with where you are based  
5 upon a term sheet or a memorandum of understanding that gets  
6 memorialized in legal documents.

7 And other than being involved maybe at the MOU term  
8 sheet type of phase, then it goes to legal, and that's where  
9 a whole different group of people, Ed Chatlos, et al., would  
10 have driven that detail work around the contract. I would  
11 have seen it. I'm sure if I had my old mailbox I had the  
12 final docs mailed to me, but that's not really where my  
13 value-add was in the process.

14 Q. Just to be clear, you were not involved in the  
15 details of the legal contract, correct?

16 A. Yes.

17 Q. You were not involved in crafting any specific  
18 provisions that went into the contract, correct?

19 A. That's correct.

20 Q. Anything contractually speaking relating to the  
21 asset purchase agreement, you didn't go there in terms of  
22 your participation?

23 A. Well --

24 MR. NORMAND: Objection to form.

25 A. Yeah, when you say contractually, putting the legal

1 verbiage to what the high level understanding was is what I  
2 did not participate in. But in establishing what the give  
3 and take in the relationship was between the parties, yeah, I  
4 was absolutely involved in that.

5 Q. (By Mr. Brakebill) And the give and take that you  
6 are referring to concerning the high level business strategy  
7 happened over the summer of 1995, correct?

8 MR. NORMAND: Objection to form.

9 A. Yeah.

10 Q. (By Mr. Brakebill) Okay.

11 A. Somewhere in that range.

12 Q. And the ironing out of the details of the legal  
13 document happened approximately the last two to three weeks  
14 before the execution of the contract on September 19, 1995,  
15 correct?

16 A. Yeah, I think --

17 MR. NORMAND: Objection to form.

18 A. I would think that that would be where the real  
19 detail back and forth trading documents would have taken  
20 place. Earlier legal work really would have been around term  
21 sheet MOU points.

22 Q. (By Mr. Brakebill) Again, just so that we're clear,  
23 the last two to three weeks before the contract was  
24 executed -- scratch that. During the last two to three weeks  
25 before the contract was executed, that was when the back and

1 forth concerning the legal provisions was taking place. Is  
2 that right?

3 A. That's right.

4 MR. NORMAND: Objection to form.

5 Q. (By Mr. Brakebill) And you weren't involved in  
6 that, correct?

7 MR. NORMAND: Objection to form.

8 A. Very superficially, maybe getting e-mails of where  
9 the documents were, but I was not in the wordsmithing of the  
10 back and forth of the detailed final contracting.

11 Q. (By Mr. Brakebill) And the strategy aspect that you  
12 were referring to that you were involved in occurred before  
13 that last two to three weeks, correct?

14 A. That's correct. And once again, that was all more  
15 MOU, LOI term-sheet based, working with Ed Chatlos and the  
16 SCO team, and Ed may have been working with the attorneys.  
17 In fact, I'm sure he probably was. But once again, division  
18 of labor, that was his role and responsibility.

19 Q. And the contract was executed on September 19,  
20 1995. Is that right?

21 A. I assume that the contract is dated that. I don't  
22 know when it was executed.

23 Q. After September 1995 when the contract was  
24 executed, you moved on to other things. You weren't involved  
25 in the Novell, Santa Cruz transaction any further, correct?

1 A. That's correct.

2 Q. Now, in terms of the high level business strategy  
3 that you were involved in, that direction was coming to you  
4 from Bob Frankenberg. Is that correct?

5 A. That's correct.

6 Q. And did you -- in terms of getting that strategy,  
7 you were working I take it primarily with Bob Frankenberg.  
8 Is that right?

9 A. Yeah, on the high level strategy. I mean,  
10 remember, it would come down, and then we would work as a  
11 team with the SCO team and the HP team trying to negotiate  
12 that strategy so that it basically fit Novell's purposes.

13 Q. And you mentioned the name Duff Thompson this  
14 morning. You did do some work with Duff Thompson, I take it?

15 A. That's correct. He was my boss after I left  
16 working for Bob Frankenberg, so I reported to Duff.

17 Q. Is it fair to say that, based on your personal  
18 knowledge, that Duff Thompson was not really involved in the  
19 details of the Novell, Santa Cruz transaction?

20 MR. NORMAND: Objection to form.

21 A. You know, I would say that that's probably a fair  
22 statement because the real detail guy in this was Ed Chatlos,  
23 and of course, Ed and I were peers and reported to Duff. But  
24 he was a general counsel and formerly with WordPerfect and  
25 was the senior or executive vice president of corporate

1 A. That's correct.

2 MR. NORMAND: Objection to form, mischaracterizes  
3 his testimony.

4 Q. (By Mr. Brakebill) Again, you said you were not  
5 involved in the details of the asset purchase agreement. Is  
6 that right?

7 MR. NORMAND: Objection to form.

8 A. I was not involved in the detail, the wordsmithing  
9 of the asset purchase agreement.

10 Q. (By Mr. Brakebill) As you sit here today, do you  
11 have any contractual basis for your personal view that Novell  
12 does not have the right to enter into buyouts on behalf of  
13 Santa Cruz or SCO?

14 MR. NORMAND: Objection to form.

15 A. I don't have any contractual basis, simply because  
16 I haven't looked at that agreement for likely 12 years.

17 Q. (By Mr. Brakebill) And I take it that it's possible  
18 that there may be a contractual provision that does address  
19 this specific issue that you're not aware of?

20 A. Well, I would assume that there are a number of  
21 points of clarification to that APA that took place. That's  
22 why the amendments were in place is points of clarification  
23 between -- I think Ted referenced IBM, SCO and Novell. So,  
24 yeah. Obviously, there were points of clarification that  
25 needed to be added to the APA.

1 Q. You weren't involved in any of the amendments  
2 relating to the asset purchase agreement, right?

3 A. That's correct.

4 Q. I take it then that none of the amendments relating  
5 to the asset purchase agreement form the basis of your  
6 personal view that Novell did not have or does not have the  
7 right to enter into buyouts on behalf of Santa Cruz or SCO;  
8 is that right?

9 A. That's correct because I have not even read the  
10 amendments.

11 Q. Okay.

12 MR. NORMAND: Object to the form.

13 Q. (By Mr. Brakebill) Now, you also were asked some  
14 questions about Novell's right to waive claims with respect  
15 to IBM. Do you recall those questions?

16 A. I do.

17 Q. Okay. And you had expressed your personal view  
18 that Novell may not have the right to waive claims on behalf  
19 of IBM; is that right?

20 A. That's correct.

21 Q. Okay. As you sit here today, I take it that you  
22 cannot point to any contractual provisions that would support  
23 that view?

24 A. That's correct.

25 Q. And again, you were not involved in Amendment 1 or



1 Amendment 2 to the asset purchase agreement?

2 A. That's correct.

3 Q. Okay. And you were not involved in crafting or  
4 wordsmithing the contractual provisions of the September 19,  
5 1995 agreement?

6 A. That's correct, the detail.

7 Q. Okay. And so you do not know whether or not there  
8 is a provision in this contract, the September 1995 document,  
9 that addresses this issue of whether or not Novell has the  
10 right to waive claims with respect to IBM?

11 A. Well, I assume there is some debatable language in  
12 there, and that's why we're here talking today.

13 Q. But you personally do not -- you can't -- as you  
14 sit here today, you can't point to a contractual provision  
15 that supports your personal view?

16 A. I can't point to a contractual provision. I have  
17 not reviewed the contract. I have not reviewed the  
18 addendums.

19 Q. You were also asked some questions about Novell's  
20 rights to receive fees from Sun and Microsoft licenses. Do  
21 you recall those questions?

22 A. I recall questions. It wasn't specifically about  
23 Sun and Microsoft, but Novell was obligated and retained the  
24 right to 95 percent of the royalty streams for the existing  
25 SVRX licensees. And that's -- that's basically the reason

1 why, you know, from a 700 million plus terminal value of that  
2 Unix business, it was sold for in the 125 range is because  
3 stripped out of that purchase price was terminal value of  
4 those payments in perpetuity, discounted back to current  
5 pricing, so basically made it easier for them to digest an  
6 acquisition that a small company that was being anointed as  
7 this consolidator of Unix so that they could handle it or  
8 afford it.

9 Q. You were not involved in crafting what the term  
10 SVRX royalties in the contract, were you?

11 A. SVRX royalties, no, I would not have been involved  
12 in defining that and scheduling that.

13 Q. Okay. And you weren't involved in crafting the  
14 phrase SVRX license for purposes of the asset purchase  
15 agreement?

16 A. That's correct.

17 Q. Okay. You were also asked some questions about  
18 Novell's right to receive fees under new SVRX licenses. Do  
19 you recall that?

20 A. I do.

21 Q. As you sit here today, can you point to any  
22 contractual provision in the asset purchase agreement that  
23 would support your view?

24 A. No. My views are all based upon the high level  
25 strategy of what we were trying to accomplish in the

1 sure. We'd have to look at it against a time line to see  
2 exactly what was transpiring at that time.

3           You tell me. Is that accurate.

4           **Q. I'll represent to you this was before the Novell**  
5 **SCO litigation, if that helps, but in any event, do you**  
6 **recall talking to Darl McBride or meeting with him at any**  
7 **point in time after this e-mail concerning the issue of who**  
8 **owns the Unix copyrights?**

9           A. Well, I mean, we worked with them on this  
10 transaction to buy Vultus, and as you can see here, I am  
11 reaching out and saying, hey, I can shed some light. But if  
12 I had any discussion with them, it would have been post this  
13 type of an e-mail.

14           **Q. Did you send an e-mail to anyone at Novell offering**  
15 **to shed any light on the copyright situation?**

16           A. I did not.

17           **Q. Is there any particular reason why you offered to**  
18 **shed some light to Darl?**

19           A. Well, I mean, I know Darl, and once again, I think  
20 I have stated pretty emphatically that although I like Novell  
21 and like IBM, I think Novell is out of bounds in what they're  
22 doing here in this claim that they didn't sell SCO anything,  
23 other than the right to partner with Novell, for 125 million  
24 dollars. To me that is absolutely absurd.

25           **Q. Is the light that you offered to shed what you told**

1 us this morning in your testimony --

2 A. Absolutely.

3 Q. -- concerning the copyrights?

4 A. Absolutely. The high level strategy of what Novell  
5 was trying to do at this -- with this divestiture is exactly  
6 what we've talked about this morning, and that all involves  
7 the copyrights because in the software business, if you don't  
8 own the copyrights to the software, you don't own anything.  
9 And 125 million dollars is a lot of money to spend for  
10 nothing.

11 Q. Is it your testimony that 125 million dollars was  
12 paid for the Unix copyrights?

13 A. Well, yeah, and as you have, you know, clarified,  
14 that was the consideration versus cash payment. But I think  
15 in M and A transactions, if you watch any of the transactions  
16 going down, people talk about, so and so bought so-and-so for  
17 X hundred million dollars. And usually that might come in,  
18 you know, different forms of consideration, cash, stock,  
19 earn-out, etc.

20 Q. Is it your testimony that a dollar amount was  
21 placed on Unix copyrights for purposes of the September 19,  
22 1995 contract?

23 A. Well, I don't know whether it was placed on just  
24 the copyrights. I think it was the entire business that we  
25 sold them. So remember, they bought the UnixWare business,

1 including its copyrights. They bought all of the Unix  
2 business, including the copyrights, but there were other  
3 intangibles that were in that bucket that they purchased at  
4 the same time.

5 Q. It's your testimony that part of the consideration  
6 for the deal was the Unix copyrights. Is that right?

7 A. Correct.

8 Q. So there was a dollar amount that was placed on the  
9 Unix copyrights?

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

12 A. You know, I don't know that it was necessarily a  
13 dollar amount that was specifically placed on the copyrights,  
14 but I think that the business in total, as I have stated, had  
15 a value at one point that was ascribed of around 700 million  
16 plus dollars. And that was not digestible by SCO that I  
17 don't think even had that public market value at the time.

18 So that's where the big bulk of what was creating  
19 that type of a terminal value was this SVRX licensee revenue  
20 that SCO had, or that Novell had and that SCO was acting as  
21 their collection agent on. So that was carved out of the  
22 deal, and then, of course, SCO was acting as their agent.

23 Q. (By Mr. Brakebill) In terms of the high level  
24 business strategy that you were involved in in connection  
25 with the negotiations for the asset purchase agreement, did

1 Novell wish to keep the Unix, consolidated Unix platform  
2 open?

3 MR. NORMAND: Objection to form.

4 A. I don't know what the term open means from your  
5 perspective.

6 Q. (By Mr. Brakebill) Was it your -- was it Novell's  
7 understanding -- was it your understanding while you were at  
8 Novell that one of the goals Novell had was that this  
9 consolidated Unix product would be licensed openly in the  
10 market?

11 A. No. I mean, when you use open in that term, I  
12 mean, when you look at the open software movement that exists  
13 today, I mean, clearly there was no intention that all of  
14 that would be put in the public domain and, you know,  
15 programmers around the Internet would actually evolve that  
16 code base.

17 It was SCO working with the acquired Novell team,  
18 working with HP, working with Intel and, you know, others, to  
19 create this code base, but that that would be code and  
20 intellectual property and source that they would own and  
21 license out to folks that would then, you know, implement  
22 that on their own hardware platforms.

23 Q. Let me just clarify my question. I didn't mean  
24 open as open source. What was -- based on your personal  
25 experience and knowledge when you were at Novell working on

1 Case: SCO v. Novell  
Case No.: 2:04CV00139  
2 Reporter: Teri Hansen Cronenwett  
Date Taken: January 19, 2007

3

W I T N E S S C E R T I F I C A T E

4

I, TY MATTINGLY, HEREBY CERTIFY that I have read  
5 the foregoing testimony consisting of 105 pages, numbered  
from 4 to 108 inclusive, and the same is a true and correct  
6 transcription of said testimony, with the exception of the  
following corrections listed below, giving my reasons  
7 therefor.

8 Page	Line	Change/Correction	Reason
9			
10			
11			
12			
13			
14			
15			
16			

9			
10			
11			
12			
13			
14			
15			
16			

No corrections were made.

17

18

19

TY MATTINGLY

20

Subscribed and sworn to at \_\_\_\_\_,

Utah, this \_\_\_\_ day of \_\_\_\_\_, 2007.

21

My commission expires:

22

23

NOTARY PUBLIC

24

25

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

C E R T I F I C A T E

STATE OF UTAH )  
COUNTY OF SALT LAKE )

THIS IS TO CERTIFY that the deposition of TY MATTINGLY was taken before me, Teri Hansen Cronenwett, Certified Realtime Reporter, Registered Merit Reporter, and Notary Public in and for the State of Utah.

That the said witness was by me duly sworn to testify; that the testimony was reported by me in Stenotype, and thereafter transcribed by computer, and that a full, true, and correct transcription is set forth in the foregoing pages, numbered 4 through 108 inclusive.

I further certify that the original transcript of the same was delivered to the witness for reading and signature before a Notary Public, and to be returned within 30 days of the date hereon.

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

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 25th day of January, 2007.

My commission expires:  
February 6, 2007

*Teri Hansen Cronenwett*

Teri Hansen Cronenwett, CRR, RMR  
License No. 91-109812-7801

