

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff/Counterclaim defendant,

vs.

CASE NO. 2:04CV00139

NOVELL, INC.,

Defendants/Counterclaim-Plaintiff

DEPOSITION OF KIM MADSEN

Februrary 13, 2007

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REPORTED BY

LAWRENCE PAUL NELSON, CSR 12144

JOB NO 191725

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1 Q. Including UNIX copyrights; correct? 10:33:13
 2 A. Including the UNIX copyrights. 10:33:16
 3 Q. And that particular paragraph Santa Cruz 10:33:18
 4 did not claim to own UNIX copyrights; correct? 10:33:22
 5 MR. NORMAND: Objection to form, asked and 10:33:26
 6 answered. 10:33:29
 7 THE WITNESS: Yes. 10:33:29
 8 BY MR. BRAKEBILL: 10:33:37
 9 Q. Yes, they did not claim to own the UNIX 10:33:37
 10 copyrights? 10:33:40
 11 A. That's correct. 10:33:41
 12 Q. Do you know when this Santa Cruz-Caldera 10:33:43
 13 deal closed? 10:33:49
 14 MR. NORMAND: Objection to form. 10:33:56
 15 BY MR. BRAKEBILL: 10:33:57
 16 Q. Approximately. 10:33:58
 17 A. I do not recall when it closed, sometime 10:34:07
 18 late in 2003, I believe. 10:34:17
 19 Q. I'll represent for the record, and Ted, 10:34:18
 20 correct me if need be, but I'll represent for the 10:34:21
 21 record that it closed in 2001. 10:34:24
 22 A. I'm sorry. What did I just say? 10:34:27
 23 Q. 2003. 10:34:28
 24 A. Oh, I'm sorry. 10:34:30
 25 Q. Just in case it impacts the time frame for 10:34:31

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1 questions. 10:34:34
 2 A. Yes, yes. 10:34:34
 3 Q. Does that sound correct to you that the 10:34:35
 4 transaction closed in approximately 2001? 10:34:37
 5 A. Yeah, February or March, I believe, now 10:34:42
 6 that I think about it. 10:34:46
 7 Q. Did you stay with Santa Cruz after the 10:34:54
 8 Santa Cruz-Caldera transaction closed? 10:34:59
 9 A. Yes. 10:35:01
 10 Q. And on or around the closing of the Santa 10:35:09
 11 Cruz-Caldera transaction in 2001 did the remaining 10:35:15
 12 business become Tarantella? 10:35:20
 13 A. Yes. 10:35:26
 14 Q. And so you stayed in Tarantella's legal 10:35:27
 15 department beginning in March or so of 2001? 10:35:34
 16 A. Yes. 10:35:36
 17 Q. And then you stayed in Tarantella's legal 10:35:38
 18 department until approximately August of 2004? 10:35:42
 19 A. Yes. 10:35:46
 20 Q. Are you aware that in 2005 Tarantella was 10:35:56
 21 purchased by Sun Microsystems? 10:36:01
 22 A. Yes. 10:36:03
 23 Q. So is it fair to say that at the time of 10:36:04
 24 the Sun purchase of Tarantella in 2005 that all of 10:36:31
 25 the assets comprising the original Santa Cruz 10:36:38

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1 Operation at the time of the Novell-Santa Cruz deal 10:36:42
 2 had been sold off to other entities? 10:36:45
 3 MR. NORMAND: Objection to form. 10:36:49
 4 THE WITNESS: I don't know the particulars 10:36:53
 5 of the transaction with Sun, so I can't answer that 10:36:54
 6 question. 10:36:59
 7 BY MR. BRAKEBILL: 10:37:04
 8 Q. As you sit here today do you have any 10:37:05
 9 understanding as to whether or not any Tarantella 10:37:06
 10 business was not purchased by Sun Microsystems in 10:37:08
 11 2005? 10:37:13
 12 A. No, I have no understanding of that. 10:37:13
 13 Q. Did Mr. Sabbath stay at Tarantella after 10:37:17
 14 the Santa Cruz-Caldera transaction? 10:37:22
 15 A. Yes. 10:37:24
 16 Q. Do you know how long he stayed at 10:37:24
 17 Tarantella? 10:37:27
 18 A. He stayed until December of 2003, I 10:37:37
 19 believe. 10:37:37
 20 Q. Do you know what he did upon his departure 10:37:42
 21 from Tarantella? 10:37:44
 22 A. I believe he's happily retired. 10:37:48
 23 Q. Now, you were involved in 2001 in 10:37:55
 24 corresponding with IBM concerning the Caldera 10:38:41
 25 acquisition of Santa Cruz assets; is that right? 10:38:47

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1 MR. NORMAND: Objection to form, 10:38:51
 2 foundation. 10:38:52
 3 THE WITNESS: I don't know. 10:38:58
 4 BY MR. BRAKEBILL: 10:39:09
 5 Q. As you sit here today you don't recall one 10:39:09
 6 way or another whether you were involved in 10:39:10
 7 correspondence with IBM in 2001 concerning Caldera's 10:39:13
 8 acquisition of Santa Cruz assets? 10:39:20
 9 A. I believe that I sent a letter to them. I 10:39:23
 10 may have had phone conversations. I don't remember 10:39:28
 11 the particulars. 10:39:32
 12 MR. BRAKEBILL: Are you going to want to 10:40:48
 13 take a break soon? I can keep going. This is a 10:40:50
 14 convenient spot. Do you want to keep going? 10:40:53
 15 THE WITNESS: Yeah, I can go a little 10:40:56
 16 longer. 10:40:58
 17 MR. BRAKEBILL: All right. 10:40:59
 18 BY MR. BRAKEBILL: 10:41:02
 19 Q. Did you have a role in the negotiation of 10:41:17
 20 the asset purchase agreement between Novell and 10:41:22
 21 Santa Cruz in 1995? 10:41:25
 22 A. Yes. 10:41:27
 23 Q. Well, how would you characterize that role 10:41:28
 24 as you sit here today? 10:41:34
 25 A. I participated in meetings, negotiations, 10:41:36

9 (Pages 30 to 33)

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1 a review of the asset purchase agreement, and 10:41:43
 2 possibly preparation of some of the schedules. 10:41:50
 3 Q. Who was part of the legal team, in-house 10:42:07
 4 legal team at Santa Cruz participating in the 10:42:10
 5 negotiation of the APA? 10:42:15
 6 A. Primarily Steve Sabbath and myself. 10:42:17
 7 Q. I take it Steve Sabbath was the lead 10:42:22
 8 in-house lawyer for Santa Cruz on the APA 10:42:26
 9 transaction? 10:42:29
 10 A. Yes, I believe he was the only lawyer at 10:42:31
 11 the Santa Cruz Operation at that time. 10:42:34
 12 Q. Now, you mentioned that you believe you 10:42:47
 13 were part of meetings concerning the asset purchase 10:42:50
 14 agreement. What meetings in particular do you have 10:42:54
 15 in mind? 10:42:57
 16 A. We had internal meetings with Geoff 10:42:59
 17 Seabrook and Jim Wilt, who were the lead business 10:43:07
 18 negotiators as well as meetings with Doug Michaels 10:43:13
 19 and Aluc Mohan, as well as meetings with Novell. Ed 10:43:20
 20 Chatlos I remember in particular meetings with Ed. 10:43:27
 21 Q. As you sit here today what specific 10:43:31
 22 meetings do you recall having with Novell prior to 10:43:34
 23 the execution of the asset purchase agreement on 10:43:36
 24 September 19th, 1995? 10:43:40
 25 MR. NORMAND: Objection to form, calls for 10:43:43

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1 a narrative. 10:43:48
 2 THE WITNESS: I'm sorry. Can you repeat 10:43:48
 3 the question? 10:43:49
 4 BY MR. BRAKEBILL: 10:43:50
 5 Q. You said you recall having meetings with 10:43:50
 6 Novell prior to the execution of the asset purchase 10:43:52
 7 agreement? 10:43:56
 8 A. Yes. 10:43:57
 9 MR. NORMAND: Are you transcribing these 10:43:58
 10 objections or do I need to speak louder? 10:43:58
 11 THE COURT REPORTER: No, I'm getting it. 10:43:58
 12 MR. NORMAND: Okay. 10:44:11
 13 BY MR. BRAKEBILL: 10:44:11
 14 Q. When's the first meeting that you recall 10:44:12
 15 having with Novell prior to the execution of the 10:44:14
 16 asset purchase agreement? 10:44:17
 17 A. I don't remember the dates. I remember Ed 10:44:22
 18 Chatlos, and there may have been other employees 10:44:30
 19 from Novell that accompanied him coming to Santa 10:44:33
 20 Cruz and having meetings in Santa Cruz as well as 10:44:38
 21 Steve and myself going to New Jersey on a couple of 10:44:42
 22 occasions and meeting to discuss the transaction, 10:44:48
 23 the contemplated transaction. 10:44:52
 24 Q. Aside from Ed Chatlos, who from Novell do 10:45:02
 25 you recall meeting with from Novell in Santa Cruz 10:45:07

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1 prior to the execution of the asset purchase 10:45:16
 2 agreement? 10:45:18
 3 A. I can't be certain of who -- there are 10:45:27
 4 names that are familiar to me but I can't be certain 10:45:32
 5 who came to Santa Cruz and who didn't. Ed is the 10:45:35
 6 person who sticks out most clearly in my mind. 10:45:38
 7 Q. You reference, if you will, two sets of 10:45:42
 8 meetings, some meetings in Santa Cruz that you had 10:45:46
 9 with Novell and some meetings that you had with 10:45:48
 10 Novell in New Jersey. Is that fair? 10:45:51
 11 A. Yes. 10:45:53
 12 Q. Did you have any meetings with Novell 10:45:54
 13 aside from those in Santa Cruz and those in New 10:45:56
 14 Jersey? 10:45:59
 15 A. Yes. While we were getting the asset 10:45:59
 16 purchase agreement we had several meetings at -- I 10:46:03
 17 believe most of the meetings were at the Brobeck law 10:46:11
 18 firm and they might have been at Wilson Sonsini's 10:46:15
 19 facilities, but we had several meetings at the 10:46:21
 20 lawyers who were representing the two parties. 10:46:25
 21 Q. Let's talk about the Santa Cruz meetings 10:46:29
 22 with Novell first. Is it fair to say you don't 10:46:33
 23 recall anyone in particular from Novell that was 10:46:36
 24 part of those meetings aside from Ed Chatlos? 10:46:38
 25 A. I don't remember anything in particular. 10:46:42

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1 I remember there were other people from Novell but I 10:46:45
 2 couldn't say with certainty as to who they were. 10:46:49
 3 Q. Do you recall when these meeting took 10:46:52
 4 place in Santa Cruz? 10:46:54
 5 A. No, I can't recall the dates. 10:47:00
 6 Q. Do you recall that those meetings were 10:47:04
 7 prior to the execution of the original asset 10:47:07
 8 purchase agreement? 10:47:10
 9 A. Yes. 10:47:11
 10 Q. You also mentioned some meetings in New 10:47:13
 11 Jersey with Novell? I believe you said you and 10:47:17
 12 Steve Sabbath went to New Jersey? 10:47:20
 13 A. Yes. 10:47:22
 14 Q. How many meetings do you recall having 10:47:22
 15 with people from Novell in New Jersey prior to the 10:47:25
 16 execution of the asset purchase agreement? 10:47:28
 17 A. There were numerous meetings over a couple 10:47:35
 18 days, a few days. 10:47:42
 19 Q. Who do you recall meeting with from 10:47:44
 20 Novell? 10:47:46
 21 A. I primarily remember meeting with Ed 10:47:48
 22 Chatlos. Burt Levine may have been involved in 10:47:59
 23 meetings. Ty Mattingly may have been involved in 10:48:03
 24 meetings. I remember speaking with him on the phone 10:48:10
 25 but I can't be certain whether or not he was 10:48:13

10 (Pages 34 to 37)

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1 Q. Why don't you turn to Exhibit 51, which is 11:56:28
2 your declaration, and I'll ask you to look at 11:56:31
3 whatever you feel comfortable to look at, but I 11:56:47
4 believe that paragraphs 8 -- 8 through 12 relate to 11:56:50
5 your beliefs concerning UNIX ownership. 11:57:03
6 A. Yes. 11:57:08
7 MR. NORMAND: Objection to form. 11:57:09
8 BY MR. BRAKEBILL: 11:57:16
9 Q. Is it a fair statement that -- well, let 11:57:17
10 me ask it this way. What, if any, other provisions 11:57:21
11 in the asset purchase agreement did you rely upon in 11:57:25
12 your belief in this declaration that UNIX copyrights 11:57:27
13 did transfer from Novell to Santa Cruz? 11:57:30
14 A. I don't know. I don't remember which 11:57:39
15 specific provisions. And I'd be happy to take the 11:57:41
16 time to review this document if you want me to do 11:57:46
17 that. 11:57:50
18 Q. I'll give you the opportunity in due 11:57:53
19 course. I'm trying to test your memory aside from 11:57:56
20 having the document in front of you right now. You 11:57:59
21 gave the declaration on UNIX ownership two months 11:58:02
22 ago; is that right? 11:58:06
23 MR. NORMAND: Asked and answered. 11:58:08
24 THE WITNESS: November 4th. 11:58:10
25 BY MR. BRAKEBILL: 11:58:11

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1 Q. In the last two to three months you gave a 11:58:11
2 declaration in which it was your personal belief 11:58:14
3 that UNIX copyrights did transfer from Novell to 11:58:17
4 Santa Cruz as part of is the asset purchase 11:58:21
5 agreement; correct? 11:58:23
6 A. Correct. 11:58:24
7 Q. And what provisions, if any, were you 11:58:24
8 relying upon for your personal belief that the UNIX 11:58:28
9 copyrights did transfer? 11:58:31
10 A. Well, I relied on the description of the 11:58:33
11 business in 1.1(a) and the recital A. I don't 11:58:39
12 recall which other provisions I may have relied on, 11:58:48
13 but I also relied on my recollection of the 11:58:54
14 transaction and the negotiations surrounding the 11:58:59
15 transaction, the conversations with Novell as to 11:59:03
16 what they were conveying and the internal 11:59:06
17 conversations as to what we believed we were buying. 11:59:09
18 Q. So to make sure that I understand your 11:59:16
19 testimony, the provisions that you right now can 11:59:19
20 point to in support of your belief that UNIX 11:59:26
21 copyrights did transfer from Novell to Santa Cruz 11:59:30
22 are recital A in section 1.1(a) of the asset 11:59:33
23 purchase agreement; is that correct? 11:59:39
24 MR. NORMAND: Objection to form. 11:59:42
25 THE WITNESS: The provisions that I can 11:59:46

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1 point to in the absence of reading the agreement 11:59:49
2 afresh, yes. 11:59:53
3 BY MR. BRAKEBILL: 11:59:56
4 Q. And how, if at all, do you believe that 12:00:07
5 recital A and section 1.1(a) of the asset purchase 12:00:09
6 agreement -- 12:00:14
7 A. And schedule 1.1(a), which is referenced 12:00:15
8 in section 1.1(a). 12:00:20
9 Q. How do you believe that recital A, section 12:00:23
10 1.1(a), and schedule 1.1(a) influenced your personal 12:00:27
11 belief that UNIX copyrights did transfer from Novell 12:00:34
12 to Santa Cruz? 12:00:44
13 A. Because all right, title, and interest -- 12:00:44
14 let me get the language here, in and to the assets 12:00:48
15 relating to the business, which is UNIX and 12:00:52
16 UnixWare, were being conveyed to SCO. And included 12:00:58
17 in that would have, of course, been the copyrights. 12:01:03
18 Q. And did you understand that in section 12:01:07
19 1.1(a) of the asset purchase agreement that -- I'll 12:01:10
20 refer you to the last sentence, that notwithstanding 12:01:16
21 schedule 1.1(a) the assets to be so purchased shall 12:01:21
22 not include the assets set forth on the schedule 12:01:24
23 1.1(b)? 12:01:28
24 MR. NORMAND: Objection to form. 12:01:29
25 THE WITNESS: Yes. 12:01:30

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1 BY MR. BRAKEBILL: 12:01:31
2 Q. And notwithstanding the excluded assets 12:01:32
3 provision from section 1.1(a), is it still your 12:01:36
4 personal belief that the UNIX copyrights did 12:01:40
5 transfer? 12:01:42
6 A. Yes. 12:01:43
7 Q. From Novell to Santa Cruz? 12:01:44
8 A. Yes. 12:01:46
9 Q. And why is that? 12:01:46
10 MR. NORMAND: Objection to form, asked and 12:01:55
11 answered. 12:01:58
12 THE WITNESS: Because it's clear -- 12:01:58
13 BY MR. BRAKEBILL: 12:01:58
14 Q. Let me put it this way. Aside from 12:02:02
15 recital A -- 12:02:06
16 A. Yes. 12:02:06
17 Q. -- aside from section 1.1(a) in schedule 12:02:07
18 1.1(a), is there any other reason for why you 12:02:11
19 believe that the assets to be so purchased shall not 12:02:14
20 include the assets set forth in schedule 1.1(b)? 12:02:16
21 A. I didn't understand the question. 12:02:23
22 Q. Aside from recital A, aside from section 12:02:24
23 1.1(a), and aside from schedule 1.1(a), is there any 12:02:28
24 other basis for your opinion that schedule 1.1(b) 12:02:36
25 does not operate -- that schedule 1.1(b) does not 12:02:42

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1 excluded UNIX copyrights from the assets to be sold? 12:02:47
 2 MR. NORMAND: Objection to form, asked and 12:02:51
 3 answered. 12:02:55
 4 THE WITNESS: Yes. As I said before, I 12:02:55
 5 also recall the conversations and discussions with 12:02:59
 6 Novell as to what the intent of the transaction was, 12:03:03
 7 what they intended to convey, what SCO intended to 12:03:13
 8 purchase. 12:03:18
 9 BY MR. BRAKEBILL: 12:03:20
 10 Q. And what did Novell convey to you 12:03:21
 11 regarding what was going to be conveyed to Santa 12:03:24
 12 Cruz with regard specifically to UNIX copyrights? 12:03:28
 13 MR. NORMAND: Objection to form. 12:03:32
 14 THE WITNESS: I do not recall a specific 12:03:36
 15 conversation regarding copyrights, but Novell 12:03:39
 16 conveyed that they were clearly divesting themselves 12:03:47
 17 of the UNIX business. They had no interest in the 12:03:52
 18 UNIX business in retaining any interest in the UNIX 12:03:59
 19 business except to the extent that it related to 12:04:02
 20 Netware. 12:04:02
 21 And they were very clear about what they 12:04:08
 22 were not conveying, which were the patents. And 12:04:16
 23 they were clear about a transaction that they had 12:04:26
 24 entered into with X/Open regarding the trademark so 12:04:29
 25 at no point did they say, "Oh, by the way, we're not

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1 giving you the copyrights." 12:04:39
 2 Q. At any point in time did Novell, anyone 12:04:40
 3 from Novell, say to you, "We're going to transfer 12:04:43
 4 the UNIX copyrights to Santa Cruz?" 12:04:47
 5 A. No I don't recall that. It was assumed by 12:04:52
 6 everyone that, of course, the copyrights were 12:04:55
 7 accompanying. 12:04:59
 8 Q. There were no express words from anyone 12:05:00
 9 from Novell to you saying Novell is going to 12:05:03
 10 transfer the UNIX copyrights to Santa Cruz; correct? 12:05:08
 11 MR. NORMAND: Objection, asked and 12:05:13
 12 answered. 12:05:14
 13 THE WITNESS: That's correct. 12:05:14
 14 BY MR. BRAKEBILL: 12:05:16
 15 Q. Now, you mentioned patents. If you could 12:05:17
 16 turn to schedule 1.1(b) of Exhibit 1 and look at 12:05:22
 17 Roman V on Exhibit 2. Roman V(b) says "all 12:05:47
 18 patents." Do you see that? Is it your 12:05:51
 19 understanding that that relates to all UNIX patents? 12:05:53
 20 MR. NORMAND: Objection to form. 12:05:57
 21 THE WITNESS: I don't remember which 12:06:00
 22 patents there were. I remember a conversation with 12:06:02
 23 Ed Chaflos and I believe Burt Levine that they would 12:06:07
 24 not be transferring any patents. And there was an 12:06:11
 25 issue because, you know -- SCO wasn't interested in 12:06:20

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1 the patents to begin with, but I remember them 12:06:25
 2 taking the pains that they wouldn't be transferring 12:06:27
 3 patents. And some of the patents had been retained 12:06:30
 4 by AT&T, the original owner of the UNIX technology, 12:06:32
 5 so they weren't Novell's to transfer. 12:06:38
 6 BY MR. BRAKEBILL: 12:06:42
 7 Q. Do you believe that Novell had no rights 12:06:42
 8 in UNIX patents at the time it was entered into the 12:06:44
 9 Novell-Santa Cruz transaction? 12:06:48
 10 MR. NORMAND: Objection to form. 12:06:49
 11 THE WITNESS: I don't know. I know that 12:06:50
 12 some were retained by AT&T but I don't know that 12:06:52
 13 some may have been transferred to Novell. I don't 12:06:55
 14 recall that. 12:06:58
 15 BY MR. BRAKEBILL: 12:06:58
 16 Q. But it is your understanding that no UNIX 12:06:59
 17 patents were being transferred from Novell to Santa 12:07:01
 18 Cruz? 12:07:06
 19 MR. NORMAND: Objection to form, 12:07:06
 20 mischaracterizes her testimony. 12:07:09
 21 THE WITNESS: I'm not sure what you mean by 12:07:09
 22 patents. No patents relating to specific areas of 12:07:11
 23 the UNIX technology. There is no, to my knowledge 12:07:16
 24 no broad patent over all of UNIX. It wouldn't be 12:07:19
 25 patentable, I don't believe, but there were no 12:07:23

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1 patents relating to the UNIX assets being 12:07:27
 2 transferred, being conveyed to SCO. 12:07:32
 3 BY MR. BRAKEBILL: 12:07:37
 4 Q. If someone were to make a statement that 12:07:37
 5 Novell transferred all UNIX intellectual property to 12:07:40
 6 Santa Cruz, is it your understanding that that 12:07:43
 7 statement would be incorrect? 12:07:45
 8 A. I'm sorry? 12:07:47
 9 Q. If someone were to make the statement that 12:07:48
 10 Novell transferred all UNIX intellectual property to 12:07:52
 11 Santa Cruz, would that be an incorrect statement? 12:07:57
 12 MR. NORMAND: Objection to form, calls for 12:08:02
 13 speculation. 12:08:13
 14 THE WITNESS: I don't understand the 12:08:13
 15 question. 12:08:14
 16 BY MR. BRAKEBILL: 12:08:16
 17 Q. If someone were to say that Novell 12:08:16
 18 transferred all intellectual property relating to 12:08:21
 19 UNIX to Santa Cruz, do you have a view as to whether 12:08:25
 20 or not that statement would be correct? 12:08:29
 21 MR. NORMAND: Objection to form, calls for 12:08:31
 22 speculation. 12:08:51
 23 THE WITNESS: I don't think I can answer 12:08:51
 24 that question. I don't know which patents there may 12:08:52
 25 have been. So if you're including that in your 12:09:02

20 (Pages 74 to 77)

1 definition of intellectual property, then that would 12:09:05
 2 have been excluded. But I believe Novell also, we 12:09:08
 3 licensed back to them certain rights. 12:09:13
 4 So I don't know if that fits into your 12:09:17
 5 definition of conveyance of intellectual property. 12:09:19
 6 So I'm sorry. I can't answer that. 12:09:22
 7 BY MR. BRAKEBILL: 12:09:28
 8 Q. Is it your understanding that the business 12:09:28
 9 that was being sold was a UNIX business? 12:09:30
 10 A. Yes. 12:09:32
 11 Q. And could you turn to attachment D of 12:09:33
 12 Exhibit 1? It ends in the number on the right-hand 12:09:44
 13 corner 977. 12:09:50
 14 A. Uh-huh. 12:10:06
 15 Q. Do you see that this is a document 12:10:07
 16 entitled "Seller's Patents and Patent Applications 12:10:10
 17 Affecting the Business"? 12:10:13
 18 A. Uh-huh. 12:10:14
 19 Q. Do you have any understanding as to 12:10:14
 20 whether these are patents or patent applications 12:10:16
 21 affecting the UNIX business that was being sold to 12:10:19
 22 Santa Cruz? 12:10:23
 23 MR. NORMAND: Objection to form. 12:10:27
 24 THE WITNESS: Yes, I believe they were. I 12:10:32
 25 don't have any specific recollection about the 12:10:36

1 individual patents, though. 12:10:39
 2 BY MR. BRAKEBILL: 12:10:42
 3 Q. I take it you would agree that none of 12:10:42
 4 these patents were transferred to Santa Cruz as part 12:10:44
 5 of the deal? 12:10:48
 6 MR. NORMAND: Objection to form. 12:10:49
 7 THE WITNESS: I believe that's correct. 12:10:53
 8 BY MR. BRAKEBILL: 12:11:25
 9 Q. Now, in your declaration which is on 12:11:27
 10 Exhibit 51 -- 12:11:29
 11 A. Uh-huh. 12:11:30
 12 Q. -- in paragraph 8 you say, "It was never 12:11:34
 13 agreed or even discussed that Novell would be 12:11:39
 14 retaining any copyrights to UNIX." Do you see that? 12:11:42
 15 A. Yes. 12:11:45
 16 Q. Again, you didn't have any discussions 12:11:46
 17 with anyone at Novell where they told you that UNIX 12:11:48
 18 copyrights were being transferred; correct? 12:11:51
 19 MR. NORMAND: Objection to form and asked 12:11:54
 20 and answered. 12:11:58
 21 THE WITNESS: I don't recall any 12:11:58
 22 conversations with Novell pertaining to copyrights. 12:12:00
 23 BY MR. BRAKEBILL: 12:12:17
 24 Q. Were you part of any conversation between 12:12:17
 25 Santa Cruz representatives and Novell 12:12:23

1 representatives where Santa Cruz put the question to 12:12:25
 2 Novell, "Can you transfer the UNIX copyrights to 12:12:28
 3 us?" 12:12:33
 4 MR. NORMAND: Objection to form. 12:12:35
 5 THE WITNESS: No, I don't recall that. 12:12:42
 6 BY MR. BRAKEBILL: 12:12:45
 7 Q. Are you aware of any conversations that 12:13:18
 8 may have taken place between Santa Cruz 12:13:23
 9 representatives and Novell representatives where 12:13:25
 10 anyone from Santa Cruz asked Novell to give them the 12:13:29
 11 UNIX copyrights as part of this deal? 12:13:37
 12 MR. NORMAND: Objection to form. 12:13:42
 13 THE WITNESS: No, I do not recall any 12:13:44
 14 conversation regarding the copyrights. It was 12:13:47
 15 assumed that the copyrights came with the business, 12:13:51
 16 but I do not have any specific recollection about a 12:13:57
 17 conversation regarding copyrights. 12:14:01
 18 BY MR. BRAKEBILL: 12:14:03
 19 Q. So it's fair to say that you were assuming 12:14:03
 20 that the UNIX copyrights were being transferred? 12:14:05
 21 MR. NORMAND: Objection to form. 12:14:08
 22 THE WITNESS: I don't believe that was my 12:14:09
 23 assumption alone, but yes, I was assuming that. 12:14:11
 24 BY MR. BRAKEBILL: 12:14:15
 25 Q. And I take it it's your view that other 12:14:22

1 members of the Santa Cruz negotiating team were 12:14:26
 2 assuming that the UNIX copyrights were being 12:14:28
 3 transferred to Santa Cruz; is that correct? 12:14:31
 4 MR. NORMAND: Objection to form, calls for 12:14:34
 5 speculation. 12:14:37
 6 THE WITNESS: I believe it was the 12:14:37
 7 understanding of SCO and Novell that the copyrights 12:14:38
 8 would follow with the business. 12:14:41
 9 BY MR. BRAKEBILL: 12:14:41
 10 Q. I'm just asking about Santa Cruz right 12:14:44
 11 now, okay? Is it fair to say that it's your view 12:14:46
 12 that other members of the Santa Cruz negotiation 12:14:53
 13 team were assuming that the UNIX copyrights were 12:14:56
 14 being transferred to Santa Cruz? 12:15:00
 15 A. Yes, that's my understanding. 12:15:02
 16 Q. Now, are you aware that Santa Cruz 12:15:20
 17 before --- strike that. 12:15:24
 18 At the time of the asset purchase agreement 12:15:25
 19 Santa Cruz had an SVRX license with Novell? 12:15:30
 20 MR. NORMAND: Objection to form. 12:15:36
 21 THE WITNESS: No. 12:15:43
 22 BY MR. BRAKEBILL: 12:15:44
 23 Q. So is it your understanding that prior to 12:15:48
 24 the execution of the asset purchase agreement, Santa 12:15:52
 25 Cruz had no rights relating to UNIX System V? 12:15:56