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MAR 5 2010

U.S. DISTRICT COURT

March 5, 2010

Please lodge

Via Hand Delivery

Honorable Ted Stewart
 United States District Judge
 350 South Main, Room 148
 Salt Lake City, Utah 84101

Good
 FILED IN UNITED STATES DISTRICT
 COURT, DISTRICT OF UTAH
MAR 05 2010
 D. MARK JONES, CLERK
 BY
 DEPUTY CLERK

Re: The SCO Group v. Novell, Inc., Civil No. 2:04-cv-00139

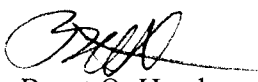
Dear Judge Stewart:

SCO has informed Novell that it intends to use videos and other demonstrative evidence in its opening statement. SCO will, of course, provide Novell with notice of the same as already agreed by the parties prior to the beginning of trial and as instructed by the Court. Despite this, Novell has conveyed to us their blanket objection to the use of deposition testimony (either by video or otherwise) in opening arguments. We believe such objection is improper and unnecessarily restricts SCO's introduction of its case and the expected evidence to the jury.

Under Federal Rule of Civil Procedure 32(a)(3) and (4), the parties may present deposition testimony "for any purpose" at trial for qualifying witnesses. We submit that where the parties are permitted to present such deposition testimony (either by video or otherwise) as evidence, we should be permitted to present such testimony in opening statements as well. See, e.g., MBI Acquisition Partners, L.P. v. Chronicle Pub. Co., 2002 WL 32349903, at *1 (W.D. Wis. Oct. 2, 2002); Jones, Rosen, Wegner, & Jones, Rutter Group Practice Guide: Federal Civil Trials & Evidence ¶¶ 6:272-6:275 (2007) (recommending the practice as "very effective advocacy"). 3 Bus. & Com. Litig. Fed. Cts. § 34:11 (2d ed. 2009) (demonstrative evidence in opening statements may be effectively used, and such evidence "now regularly includes use of videotaped depositions, blow-ups of incriminating or embarrassing emails, key written documents with highlighted portions, and even transcripts of tape recordings scrolling on a screen while a tape is playing through earphones made available to all jurors").

If our understanding of what will be allowed by Your Honor is in error, we would appreciate the Court's guidance prior to trial.

Sincerely yours,


 Brent O. Hatch

c: Sterling Brennan
 Michael Jacobs