

EXHIBIT 4

June 28, 2007

By Facsimile and First-Class Mail

Kenneth W. Brakebill, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482

Re: SCO v. Novell, Civil No. 2:04CV00139DAK

Dear Ken:

I write to set forth SCO's view that Novell has waived any claim of attorney-client or work-product privilege, both for purposes of trial and over numerous documents identified in Novell's Privilege Log and Supplemental Privilege Log, regarding communications between Novell and its counsel concerning the negotiation and drafting of the 1995 Asset Purchase Agreement ("APA") and related documents, such as Amendment No. 2 to the APA.

I set forth below two principal bases on which Novell has waived any claim of such attorney-client or work-product privilege.

First, Novell has repeatedly allowed former Novell executives to testify to communications with their counsel regarding the negotiation, drafting and execution of such documents, and Novell's counsel themselves have even asked witnesses such questions. See, e.g.:

- Deposition of Robert J. Frankenberg (Feb. 10, 2007) at 68-70, 135-36 (Ex. A).
- Deposition of Ty Mattingly (Jan. 19, 2007) at 32-33 (Ex. B).
- Deposition of Ed Chatlos (Mar. 22, 2007) at 37-39, 80-81 (Ex. C).
- Deposition of Burt Levine (Mar. 23, 2007) at 153-54 (Ex. D).

Indeed, counsel for SCO both gave notice to counsel for Novell and specified on the record during Mr. Frankenberg's deposition that Novell's questions would and did constitute a waiver of the privilege. (See Ex. A at 66-70.) In repeatedly allowing such questions and answers without objection, Novell has waived any claim that the communications between its former executives and their counsel (whether inside or outside) are within attorney-client or work-product privilege.

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Second, Novell has relied in particular on the declarations of attorneys David Bradford and Tor Braham regarding communications between the two with respect to the negotiation, drafting and execution of such documents. In addition to relying on those declarations for purposes of summary judgment, counsel for Novell repeatedly asked deposition questions on the premise that Novell relies on the testimony of Messrs. Bradford and Braham regarding such documents. See, e.g.:

- Deposition of Robert J. Frankenberg (Feb. 10, 2007) at 69-70, 79-80 (Ex. A).
- Deposition of Duff Thompson (Feb. 13, 2007) at 30-31, 135-36, 140-41 (Ex. E).
- Deposition of Ty Mattingly (Jan. 19, 2007) at 89-91 (Ex. B).
- Deposition of Ed Chatlos (Mar. 22, 2007) at 79-83, 101-02, 125-29 (Ex. C).
- Deposition of Burt Levine (Mar. 23, 2007) at 179-80 (Ex. D).

Novell has also relied on the declaration of James Tolonen and, to some extent, Alison Amadia with respect to the negotiation, drafting and execution of the APA. In her declaration, for example, Ms. Amadia describes otherwise privileged communications between herself (for Novell) and Mr. Braham (for Wilson Sonsini).

Where Novell relies on the sworn testimony of counsel (both inside and outside) regarding the negotiation, drafting or execution of such documents or related communications, Novell not only has directly waived any claim of privilege for the documents and communications, but also has created a situation in which the truthfulness of the factual assertions in such testimony may be assessed only by examination of the allegedly privileged communications involving counsel and the related communications between Novell and its outside counsel. Under the circumstances, Novell's claim of attorney-client and work-product privilege over communications between Novell and its counsel in the fall of 1995 regarding the negotiation, drafting or execution of the APA and related documents significantly prejudices SCO and its ability to cross-examine Messrs. Bradford, Braham, and Tolonen and Ms. Amadia regarding the substance of their declaration testimony. (SCO has argued otherwise, but the Court may determine such testimony to be relevant and admissible at trial.)

Accordingly, please confirm by July 2, 2007, that Novell will produce without redaction (1) the documents identified as the following entries in Novell's Privilege Log: Nos. 372-73, 465-96, 500-511, 514-20, 522-32, 535, 540-51, 648-49, 703, 798-804, 853, 861, 865-67, 873, and 1022-24; and (2) the documents identified in Novell's Supplemental Privilege Log Re: Wilson Sonsini Documents (Entry Nos. 1-15). Absent a response, SCO will raise these issues by motion to compel with the Court.

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I am available to discuss the foregoing if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward Normand".

Edward Normand

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July 17, 2007

Writer's Direct Contact
415.268.7159
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By Telefacsimile & Email

Edward J. Normand, Esq.
Boies, Schiller & Flexner LLP
333 Main Street
Armonk, NY 10504

Re: *The SCO Group, Inc. v. Novell, Inc.*
Case No. 2:04 CV 00139 DAK

Dear Ted:

I write to respond to your June 28, 2007 letter claiming that Novell has waived attorney-client and work-product privileges concerning 96 documents from Novell's Privilege Log and 15 documents from Novell's Supplemental Privilege log.

As you explained in our telephone call on July 13, SCO believes three categories of subject-matter waiver have occurred pertaining to these 111 documents:

1. Negotiation of the APA or amendments concerning copyright transfer or § 4.16 rights
2. Negotiation of the APA or amendments, even if not concerning copyrights or § 4.16
3. Negotiation of related documents, such as the Operating Agreement or the Bill of Sale

We do not agree that any waiver has occurred. In the hopes of resolving this matter without motion practice, however, we have reviewed the 111 documents identified in your letter with the above categories in mind. As a preliminary matter, our review has disclosed that:

- Entry No. 465 has been previously produced as NOV 43433-43488;
- Entry No. 467 has been previously produced as NOV 43439-43452;
- Entry No. 473 has been previously produced as NOV 43453-43457;
- Entry No. 474 has been previously produced as NOV 43458-43462;

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- Entry No. 703 has been previously produced as NOV 40893-40894;
- Entry No. 1022 has been previously produced as NOV 38114-38116 (cover sheet) and NOV 42427-42465 (attached APA draft);
- Entry No. 1023 has been previously produced as NOV 31780-31820, and Entry No. 1024 is a repeat of a portion of the same document (NOV 31788-31820); and
- Entry Nos. 468, 471, 481-83, and 798 are appropriate to produce (regardless of waiver), and we will do so shortly.

Attached please find an updated log removing the above. As to the remaining 97 documents, we report as follows:

- None of the documents concern the first category of subject matter.
- Entry Nos. 522-24 arguably fall within the second subject matter category. Entry 523 is a draft closing checklist; 522 and 524 are transmittal cover sheets for the checklist. We have reviewed the material cited in your letter and have concluded that nothing said therein could have waived the privileges protecting these documents. That said, after the checklist was reviewed with counsel, a version of the list identical to Entry No. 523 was then forwarded to the Novell/SCO working group and produced at NOV 16650-16651.
- Entry Nos. WS-2, WS-3, WS-4, WS-6, and WS-7 also arguably fall within the second category to the extent they include drafts of Amendment No. 1. We have found no testimony concerning Amendment No. 1 among the material you reference, however, and cannot accept the proposition that a simple affirmation that "I was involved" from an attorney waives privilege as to all documents concerning in any way that involvement.
- Entry Nos. 372-73, 466, 469, 470, 472, 478, 485-496, 525-31, 540-50, 799-800, 861, WS-1, and WS-5 arguably fall within the third subject matter category. We have reviewed the material cited in your letter and have concluded that nothing said therein could have waived privileges surrounding, *e.g.*, the drafting of the Operating Agreement.
- Entry Nos. 475-77, 479-80, 484, 500-511, 514-20, 532, 535, 551, 648-49, 801-04, 853, 865-67, 873, as well as WS-8 - WS-15 concern topics not implicated by any of the three subject matter categories — *e.g.*, AT&T pension obligations.

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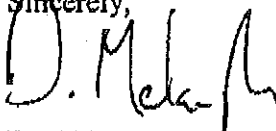
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The attached, revised log adds detail to many of the log entries addressed above to further clarify the nature of the document logged.

On our July 13 call, you expressed concern that the continuing meet and confer on this issue would be used to support a delay of the trial. Provided the parties continue to address this matter in good faith, we do not anticipate advancing such an argument. We therefore remain open to additional meet and confer.

Sincerely,



David E. Melaugh

Attachments, by email only

cc: Stuart Singer, by telefacsimile

sf-2354828

From: Ted Normand
Sent: Wednesday, August 08, 2007 5:08 PM
To: Melaugh, David E.
Cc: Brakebill, Ken W.; Sashi Bach Boruchow
Subject: RE: Correspondence regarding Asserted Waiver of Privilege

David –

Further to your note below, and reserving all rights regarding our previous arguments on the issues of waiver and relevance, I have the following comments and request more detail (as set forth below) regarding the following entries:

- WS-2, 3, 4, 6, and 7: What aspects of Amendment No. 1 are at issue?
- 466: What aspects of the Operating Agreement are at issue?
- 469-70: What are the referenced "development agreements"?
- 478: What "notification" to the customers is at issue?
- 485-96: What aspects of the disclosure scheduled are addressed in the referenced communications?
- 525-31: What aspects of the agreements at issue are addressed in the referenced communications?
- 540-50: What aspects of the agreements at issue are addressed in the referenced communications?
- 799-800, 861: What aspects of the agreements are at issue in the referenced communications?
- WS-5: What aspects of these agreements are highlighted or addressed in the e-mail?
- 510-11: Engagement letters are generally discoverable. What is the general nature of the assertedly privileged referenced communications?
- 518-20: What aspects of the Netware license are at issue in the referenced communications?
- 532, 535: What aspects of the ruling are at issue in the referenced communications?
- 551: What is "Novell KK"?
- 648: What antitrust issues are at issue in the referenced communication?
- 649: What about the SEC is at issue in the referenced communication?

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- 853: What aspects of the disclosure schedule are at issue in the referenced communication?
- 865-67: The transfer of licenses bears on Section 4.16 (among other things). What about the transfer of licenses is at issue in the referenced communications?

I also note that WS-9 is described as concerning Amendment X but is dated "10/30/95." Please clarify. Regards,

Ted

From: Melaugh, David E. [mailto:DMelaugh@mofo.com]
Sent: Tuesday, July 31, 2007 12:32 PM
To: Ted Normand
Cc: Brakebill, Ken W.; Sashi Bach Boruchow
Subject: RE: Correspondence regarding Asserted Waiver of Privilege

Ted,

We appreciate the thought you have put into coming up with a proposal that keeps the parties out of the courthouse. Your proposal raises a variety of issues that mitigate against its adoption, however. For example, permitting a party who is inarguably outside the privilege a "quick peek" potentially waives the privilege as to other parties, in other litigation (e.g., the Gray litigation in which we are both embroiled).

We propose you proceed with our log as we have with yours. You identified roughly 200 documents from your log as irrelevant, unwaived, etc. We then identified a select set -- 9 documents -- as to which we have asked for additional detail to evaluate your continuing claim of privilege. We have already provided additional detail as to the 97 documents identified in my July 17 letter. If there are particular documents as to which you would like more detail, we can accommodate that. Put otherwise, your description that a document concerns "the UnixWare trademark in Mexico" has been enough for us to agree that it is irrelevant to this litigation; our description that a document concerns "AT&T pension obligations" should likewise be enough for you.

We will produce an unredacted copy of Entry No. 467. Entry Nos. 481 & 482 contain attorney notes that do not concern issues in dispute in this litigation and are therefore not within the scope of the waiver SCO claims has occurred; we will add these to our redaction log.

David E. Melaugh
Morrison & Foerster LLP
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 San Francisco, California 94105
 Phone: (415) 268-7159
 Facsimile: (415) 268-7522
 E-mail: dmelaugh@mofo.com

From: Ted Normand [mailto:TNormand@BSFLLP.com]
Sent: July 25, 2007 10:09 AM
To: Melaugh, David E.
Cc: Brakebill, Ken W.; Sashi Bach Boruchow
Subject: Correspondence regarding Asserted Waiver of Privilege

David –

I write with respect to your letter to me dated July 17, 2007, and your e-mail to me dated July 19, 2007, responding to my letter dated June 28, 2007, and to our subsequent conversation. In your July 17 letter, in responding to my assertion that Novell has waived the attorney-client privilege with respect to many documents listed as entries on Novell privilege logs, you refer to several entries had been previously produced and to additional entries that "are appropriate to produce" and that you produced in some form in your July 19 e-mail. By our reckoning, however, at

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least three of those referenced documents were previously produced and/or subsequently produced with your July 19 e-mail only in redacted form. Those entries are 467, 481, and 482. Please produce those documents (and any other documents that Novell has removed from its updated privilege log) in unredacted form.

With respect to the "remaining 97 documents" referenced in your July 17 letter, the parties appear to remain in disagreement as to whether there has been any waiver and, if so, the extent of its scope and the potential relevance of the referenced documents. In an effort to reach an amicable solution to the log-jam, I propose that SCO be permitted a "quick peek" review of those unredacted documents to enable SCO to determine the relevance (if any) of the documents. As you may know, this type of "quick peek" approach has often been used in complex civil litigation regarding claims of attorney-client privilege. The foundation of the agreement is that SCO would not assert in any context (either this litigation or any other) that Novell has waived any claim of privilege over the documents by virtue of permitting SCO's counsel quickly to review the documents for relevance.

Please get back to me at your earliest opportunity regarding the foregoing. Regards,
Ted

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Ted Normand

From: Ted Normand
Sent: Monday, February 01, 2010 1:33 PM
To: Muino, Daniel P.
Cc: Jacobs, Michael A.; Mauricio A. Gonzalez
Subject: SCO v. Novell correspondence on issue of attorney-client privilege

Attachments: DOC020110-001.pdf



DOC020110-001.pdf
f (273 KB)

an --

One of the unfolding issues that was stopped in its tracks by the district court's 8/10/07 order was the dialogue between our firms regarding the issue of attorney-client privilege reflected in the attached correspondence.

The last communication was between myself and David Melaugh, on August 8, in which I was following up on his question of whether I had any specific questions regarding certain documents that Novell had identified as privileged in its privilege log.

I ask that, in David's stead, you respond to the inquiries set forth in my August 8 e-mail. Thanks,

Ted