

EXHIBIT A

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THE SCO GROUP, INC.,)
)
Plaintiff,)

vs.) No. 2:03CV0294

INTERNATIONAL BUSINESS)
MACHINES CORP.,)
)
Defendant.)

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VIDEOTAPED DEPOSITION OF MICHAEL DeFAZIO
New York, New York
Thursday, January 13, 2005

Reported by:
Jennifer A. Ocampo, CSR
JOB NO. 169142

1 DeFazio

2 MR. ESKOVITZ: Objection to form.

3 A. I was the head from 1984 to 1995.

4 Q. After 1995, Mr. DeFazio, when Novell
5 sold certain of its UNIX related assets to the
6 Santa Cruz operation, Inc., which is now known as
7 Tarantella, did you continue to be involved in
8 Novell's remaining UNIX business in, primarily in
9 an administrative and advisory capacity.

10 MR. ESKOVITZ: Objection to form.

11 A. Yes, I had to help out to make sure
12 Novell implemented its part of the agreement. I
13 also had a different responsibility within Novell
14 in that period.

15 Q. What were your responsibilities within
16 AT&T during the period from 1994 through 1995 --
17 withdrawn.

18 What were your responsibilities with
19 respect to the UNIX operating system during the
20 period from 1984 through 1995?

21 A. My initial responsibilities when I
22 transferred into the organization was to head the
23 product management organization. Over the course
24 of time I assumed increasing responsibilities. I
25 always maintained the product management

1 DeFazio
2 organizational responsibility. I then assumed
3 responsibility for licensing operations. I
4 assumed responsibility for our overseas affiliates
5 in Japan and Europe. I assumed UNIX marketing
6 responsibility and I assumed UNIX development
7 responsibility.

8 By the time we were in USL, I was the
9 executive vice president responsible for the
10 overall UNIX system business and within Novell,
11 after we were merged into Novell, and some period
12 of time we consolidated UNIX operations within
13 Novell, and I was named executive vice president
14 and general manager of the so-called UNIX system
15 group within Novell.

16 Q. Is there anything inaccurate about the
17 first paragraph of your declaration, Mr. DeFazio?

18 A. No.

19 Q. I direct your attention, if I may, to
20 Paragraph 4, which appears at page 3. When did
21 you begin working -- withdrawn.

22 Did there come a point when you began
23 working for Bell Laboratories?

24 A. I started my full time career with Bell
25 Laboratories in 1967.

1 DeFazio

2 responsibility for UNIX System V including the
3 terms and conditions of source code license
4 agreements such as the IBM related agreements and
5 the Sequent related agreements?

6 MR. ESKOVITZ: Objection to form.

7 A. Yes. They were -- those were subsets
8 of the broad responsibilities I had.

9 Q. Did there come a point when USL entered
10 into discussions regarding a potential merger
11 with Novell?

12 A. Yes.

13 Q. Do you recall when that was?

14 A. That was in 19 -- late 1992, early
15 1993.

16 Q. Were you a member of the team that
17 negotiated the transaction?

18 A. Yes, I was.

19 Q. And was the transaction -- was there a
20 transaction completed?

21 A. Yes, it was.

22 Q. And in June of 1993 did Novell acquire
23 USL by merger?

24 A. Yes, it did.

25 Q. And in January 1994 did you become

1 DeFazio
2 executive vice president UNIX systems group of
3 Novell?
4 A. Yes, I did.
5 THE VIDEOGRAPHER: The time is 3:12
6 p.m. we're going off the video record.
7 (Discussion off the record.)
8 (A brief recess was taken.)
9 THE VIDEOGRAPHER: The time is 3:15
10 p.m. and we're back on the video record.
11 Q. Mr. DeFazio, are you familiar with Bob
12 Frankenberg?
13 A. Yes, I am.
14 Q. And who is Bob Frankenberg?
15 A. Bob Frankenberg was brought in as the
16 CEO of Novell replacing Ray Noorda approximately
17 June of 1994 with a tenure lasting through -- into
18 August 1996.
19 Q. Are you familiar with a Doug Michaels?
20 A. Yes, I am. Doug Michaels was one of
21 the principals, one of the founders and executive
22 vice president of the original Santa Cruz
23 operation.
24 Q. Do you recall, as you sit here today,
25 when Mr. Frankenberg resigned as CEO of Novell?

1 DeFazio

2 A. Yes, I do, it was August 1996.

3 Q. Did there come a point when you met
4 with Mr. Frankenberg and Mr. Michaels to discuss
5 the possibility of a sale of Novell's UNIX
6 business to Santa Cruz?

7 A. Yes, there was in, I believe, it was
8 July of 1995, perhaps June.

9 Q. Would it be fair to say Mr. DeFazio
10 that at that time you were the senior executive
11 most knowledgeable within Novell regarding UNIX?

12 A. Yes, that's correct.

13 Q. And did you spend, well, how much time,
14 Mr. DeFazio, did you spend negotiating that
15 transaction with Novell?

16 A. I met with Doug Michaels and Bob
17 Frankenberg and out of that meeting we agreed to
18 pursue a sale. I then with Ed Chatlos and Ty
19 Mattingly, Bob Frankenberg's assistant, traveled
20 and met with the Doug Michaels and some of his
21 colleagues in Santa Cruz with a specific proposal
22 for how we would do that sale.

23 We came out of that meeting with a
24 high-level agreement. I went back and we put
25 together a team headed by Ed Chatlos to work the

1 DeFazio
2 details of how we would implement that, and I
3 spent essentially all of my time subsequently
4 working in one way or another aspects of that
5 deal.

6 Now, most of my time after that meeting
7 was spent working within Novell itself on all of
8 the details, architecting the way we would do it.
9 Working the time frames and working the large
10 number of personnel issues that were associated
11 with this since the organization had probably 400
12 people at that time.

13 So I can't give you a number of hours
14 other than to say this was my prime job in that
15 period and there was a strong team of people,
16 Novell people, Novell lawyers, Novell outside
17 lawyers working with their counterparts at Santa
18 Cruz to put together the details of the deal.

19 Q. On September 19, 1995 Novell entered
20 into an asset purchase agreement with Santa Cruz;
21 is that right?

22 A. That's correct.

23 Q. And is it agreeable that if during this
24 deposition we refer -- withdrawn.

25 Is it agreeable if during this

1 DeFazio

2 (A brief recess was taken.)

3 THE VIDEOGRAPHER: The time is 4:55

4 p.m. and we're back on the video record.

5 BY MR. MARRIOTT:

6 Q. Did there come a point, Mr. DeFazio,

7 when Novell sold certain UNIX system related

8 assets to Santa Cruz?

9 A. Yes.

10 Q. And do you recall when that was?

11 A. That was in the end of 1995.

12 Q. I believe you testified earlier that

13 you understood Novell to have retained significant

14 assets in that sale; is that right?

15 A. That is correct.

16 Q. And did the retained asset include, as

17 you understand it, important intellectual property

18 and significant substantive rights under the UNIX

19 System V source code license agreement such as the

20 IBM related agreements and the Sequent related

21 agreements?

22 MR. ESKOVITZ: Objection to form.

23 A. Yes, that's correct.

24 Q. And who was responsible for negotiating

25 the sale of Novell's UNIX business to Santa Cruz?

1 DeFazio

2 A. Ed Chatlos and I were primarily
3 responsible.

4 Q. How many UNIX businesses did Novell
5 then have?

6 A. The way we looked at the UNIX business,
7 we parsed it into two components at that time. A
8 UnixWare business and a source licensing or legacy
9 System V business.

10 Q. And what was the purpose of each of
11 those businesses, if you could briefly describe
12 it?

13 A. The UNIX System V source licensing
14 business was the outgrowth of the original way we
15 provided UNIX system technology to the marketplace
16 where we provided it in source form customers were
17 adapted to their marketplace needs, they in turn
18 would ship a binary version of the operating
19 system to their customers, pay us a royalty.

20 The UnixWare business was Novell
21 actually developing a final binary form version of
22 the UNIX operating system that was targeted to
23 Intel specific X86 computer systems, basically PCs
24 and servers and providing that product, that
25 operating system product in binary form into the

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, Jennifer A. Ocampo, a Notary Public
within and for the State of New York, do hereby
certify:

That MICHAEL DeFAZIO, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by the witness.

I further certify that I am not related
to any of the parties to this action by blood or
marriage, and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 17th day of January 2005.

JENNIFER A. OCAMPO