INSTRUCTION NO. 1

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as the Court will give it to you. You must follow that law whether you agree with it or not.

Nothing the Court may say or do during the course of the trial is intended to indicate nor should be taken by you as indicating what your verdict should be.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

INSTRUCTION NO. 2

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to, or that the Court may instruct you to find.

Certain things are not evidence and must not be considered by you. I will list them for you now:

1. Statements, arguments and questions by lawyers are not evidence.

2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that the Court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

INSTRUCTION NO. 3

This is a civil case. Plaintiff has the burden of proving its case by what is called the preponderance of the evidence. That means Plaintiff has to produce evidence which, considered in the light of all the facts, leads you to believe that what Plaintiff claims is more likely true than not. To put it differently, if you were to put Plaintiff's and Defendant's evidence on opposite sides of the scales, Plaintiff would have to make the scales tip somewhat on its side. If Plaintiff fails to meet this burden, the verdict must be for Defendant.

Defendant has also brought a claim for relief against Plaintiff, called a counterclaim. On this claim, Defendant has the same burden of proof as Plaintiff has on its claim.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That requirement does not apply to a civil case and you should therefore put it out of your mind.

INSTRUCTION NO. 4

In this particular civil case, one of the elements of the claims made by the parties has a different burden of proof called clear and convincing evidence. That means the party making those claims has a higher burden than preponderance of the evidence, but it does not require proof beyond a reasonable doubt. Clear and convincing evidence is evidence that shows it is highly probable that what is claimed is true. It is evidence that produces in your mind a firm belief as to the fact at issue.

For such evidence to be clear and convincing, it must at least have reached the point where there remains no substantial doubt as to the truth or correctness of the claim based upon the evidence. I will instruct you further after you hear the evidence which element of the parties' claims requires this heightened burden of proof.

INSTRUCTION NO. 5

The Jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. You should take into consideration their demeanor upon the witness stand, their apparent intelligence or lack of intelligence, their means of knowledge of the facts testified to, the interest, if any, which any witness may have in the outcome of this trial, the prejudice or motives, or feelings of revenge, if any, which have been shown by the evidence. In so doing, you may take into consideration all of the facts and circumstances in the case and give such weight as you think the same are entitled to, in light of your experience and knowledge of human affairs.

INSTRUCTION NO. 6

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 7

Next, a few words about your conduct as jurors.

First, I instruct you that during the trial you are not to discuss the case with anyone, including fellow jurors, or permit anyone to discuss it with you. Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case. Not talking about this case means not talking about it in any way, including by Internet, e-mail, text message and instant communication devices or services, such as cell phones, Blackberries, iPhones, or social networking websites including Facebook, Twitter, My Space, Linkedin, YouTube, and so on.

Second, do not read or listen to anything touching on this case in any way. Do not watch or listen to any news reports concerning this trial on television or on the radio, and do not read any news accounts of this trial in a newspaper, on the internet, or on any instant communication device, again including Facebook, Twitter, and so on. If anyone should try to talk to you about it, bring it to the Court's attention promptly.

Third, do not do any research or make any investigation about the case on your own.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

INSTRUCTION NO. 8

The Court will permit jurors to take notes during the course of this trial. But if you do, leave them in the jury room when you leave at night. And remember that they are for your own personal use.

You, of course, are not obligated to take notes. If you do not take notes you should not be influenced by the notes of another juror, but rely upon your own recollection of the evidence.

Note-taking must not be allowed to interfere with the ongoing nature of the trial or distract you from what happens here in court. Notes taken by any juror, moreover, are not evidence in the case and must not take precedence over the independent recollection of the evidence received in the case. Notes are only an aid to recollection and not entitled to any greater weight than actual recollection or the impression of each juror as to what the evidence actually is. Any notes taken by any juror concerning this case should not be disclosed to anyone other than a fellow juror.

INSTRUCTION NO. 9

At the end of trial, you must make your decision based on what you recall of the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the testimony as it is given.

INSTRUCTION NO. 10

The trial will now begin. First, each side may make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, Plaintiff will present its witnesses and Defendant may cross-examine them. Then Defendant will present its witnesses and Plaintiff may cross-examine them.

At the close of the evidence, the Court will give you instructions on the law, after which the attorneys will make their closing arguments to summarize and interpret the evidence for you.

You will then retire to deliberate on your verdict.

INSTRUCTION NO. 11

MEMBERS OF THE JURY:

Now that you have heard the evidence, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence of the case.

You are to disregard any evidence offered at trial and rejected by the Court. You are not to consider questions of counsel as evidence. You are not to consider the opening statements and the arguments of counsel as evidence. Their purpose is merely to assist you in analyzing and considering the evidence presented at trial.

The Court did not by any words uttered during the trial or in these instructions give or intimate, or wish to be understood by you as giving or intimating, any opinions as to what has or has not been proven in this case or as to what are or are not the facts of the case.

INSTRUCTION NO. 11A

The claim of Novell that SCO slandered Novell's title is no longer before you and will not be decided by you. Do not concern yourselves with this development and do not speculate about it.

INSTRUCTION NO. 12

SCO has the burden of proving its claim by a preponderance of the evidence.

To prove by a preponderance of the evidence means to prove something is more likely so than not so. It does not mean the greater number of witnesses or exhibits. It means the evidence that has the more convincing force when taken on the whole compared to the evidence opposed to it. It means the evidence that leads you the Jury to find that the existence of the disputed fact is more likely true than not true.

Any finding of fact you make must be based on probabilities, not possibilities. A finding of fact must not be based on speculation or conjecture.

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression "if you find" or "if you determine," I mean that you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

In determining whether any disputed fact has been proven by a preponderance of the evidence you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits.

If a party fails to meet its burden of proof, or if the evidence weighs so evenly that you are unable to say that there is a preponderance on either side, you must resolve the question against the party who has the burden of proof on that issue and in favor of the opposing party.

INSTRUCTION NO. 13

In this particular civil case, one of the elements of the claim made by SCO—the showing of "constitutional malice"—has a different burden of proof called clear and convincing evidence. That means that SCO has a higher burden than preponderance of the evidence, but it does not require proof beyond a reasonable doubt. Clear and convincing evidence is evidence that shows it is highly probable that what is claimed is true. It is evidence that produces in your mind a firm belief as to the fact at issue. For such evidence to be clear and convincing, it must at least have reached the point where there remains no substantial doubt as to the truth or correctness of the claim based upon the evidence.

INSTRUCTION NO. 14

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the complaint of SCO, and the answer thereto of Novell. You are to perform this duty without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

INSTRUCTION NO. 15

During this trial I have permitted you to take notes. Many courts do not permit note-taking by jurors, and as instructed at the beginning of trial, a word of caution is in order. There is always a tendency to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of the proceeding or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes to deliberating and rendering a decision in this case.

INSTRUCTION NO. 16

Both SCO and Novell are corporations and, as such, can act only through their officers and employees, and others designated by them as their agents.

Any act or omission of any officer, employee or agent of a corporation, in the performance of the duties or within the scope of the authority of the officer, employee or agent, is the act or omission of the corporation.

INSTRUCTION NO. 17

Unless you are otherwise instructed, the evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence regardless of who may have produced them; and all facts which may have been admitted or stipulated; and all facts and events which may have been judicially noticed.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

INSTRUCTION NO. 18A

There are, generally speaking, two types of evidence from which a Jury may properly find the truth as to the facts of a case. One is direct evidence -- such as the testimony of an eyewitness. The other is indirect or circumstantial evidence -- the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the Jury find the facts in accordance with the burden of proof in the case, both direct and circumstantial.

INSTRUCTION NO. 19

You, as jurors, are the sole judges of the credibility of witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witnesses, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

INSTRUCTION NO. 20

Witnesses who, by education, study and experience, have become expert in some art, science, profession or calling, may state opinions as to any such matter in which that witness is qualified as an expert, so long as it is material and relevant to the case. You should consider such expert opinion and the reasons, if any, given for it. You are not bound by such an opinion. Give it the weight you think it deserves. If you should decide that the opinions of an expert witness are not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinions are not sound, or that such opinions are outweighed by other evidence, you may disregard the opinion entirely.

INSTRUCTION NO. 21

In resolving any conflict that may exist in the testimony of experts, you may compare and weigh the opinion of one against that of another. In doing this, you may consider the qualifications and credibility of each, as well as the reasons for each opinion and the facts on which the opinions are based.

INSTRUCTION NO. 22

In determining the weight to be given to an opinion expressed by any witness who did not testify as an expert witness, you should consider his or her credibility, the extent of his or her opportunity to perceive the matters upon which his or her opinion is based and the reasons, if any, given for it. You are not required to accept such an opinion but should give it the weight to which you find it entitled.

INSTRUCTION NO. 23

During the trial of this case, certain testimony has been presented to you by way of a deposition, consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented in writing under oath or on a videotape. Such testimony is entitled to the same consideration, and is to be judged as to credibility, and weighed, and otherwise considered by the jury, in so far as possible, in the same way as if the witness had been present, and had testified from the witness stand.

INSTRUCTION NO. 24

Certain charts, graphs, and illustrations have been shown to you. Those charts, graphs, and illustrations are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

INSTRUCTION NO. 25B

You have heard evidence that there were earlier rulings by this Court concerning the ownership of the UNIX and UnixWare copyrights existent as of the date of the Asset Purchase Agreement. In making these rulings, the Court did not have the benefit of the evidence that you have now heard. These prior rulings have been reversed in a unanimous ruling by the Court of Appeals, which is why these issues are being presented to you in this trial. You must decide this case solely on the evidence presented to you in this trial. The earlier rulings should have no bearing on your determination of which party owns the copyrights at issue in this case. However, the existence of these prior rulings may be considered by you in your determination of special damages and punitive damages, if any.

You heard reference to a SCO Group bankruptcy. That is a reorganization proceeding which is pending in another court. SCO continues to operate its business in reorganization and the existence of that proceeding should have no bearing on your consideration of this case.

You have also heard reference to a trial involving SCO and Novell in 2008. That trial concerned other issues that are not before you.

INSTRUCTION NO. 26

In this case, SCO has alleged that Novell has slandered its title regarding ownership of copyrights over the UNIX and UnixWare computer operating systems.

Slander of title requires you to find that:

(1) there was a publication of a statement disparaging SCO's title;

(2) the statement was false;

(3) the statement was made with constitutional malice; and

(4) the statement caused special damages.

I will now explain these four elements in more detail.

INSTRUCTION NO. 27B

The first element requires SCO to prove that Novell published a statement that disparaged SCO's title or ownership of the UNIX or UnixWare copyrights existent as of the date of the Asset Purchase Agreement. SCO alleges that Novell made several slanderous statements in 2003 and 2004. The allegedly slanderous statements do not include statements made in pleadings and filings made by Novell in connection with this litigation, which began in January 2004. Novell may not be held liable for making such statements made in pleadings and filings.

For the statement to have been published, it must have been communicated to someone other than SCO.

A statement is not slanderous if the context makes clear that the speaker is expressing a subjective view or an interpretation or theory, rather than an objectively verifiable fact. You may determine, however, that the speaker intended to convey a statement of fact even if the speaker has couched its statements in the form of an "opinion" or "belief."

In deciding whether a publication disparaged SCO's title, you should not view individual words or sentences in isolation. Rather, each statement must be considered in the context in which it was made, giving the words their most common and accepted meaning. You should also consider the surrounding circumstances of the statement, and how the intended audience would have understood the statement in view of those circumstances.

INSTRUCTION NO. 28

The second element of a claim for slander of title is falsity of the statement that disparages title. "False" means that the statement is either directly untrue or that an untrue inference can be drawn from the statement. You are to determine the truth or falsity of the statement according to the facts as they existed at the time the statement was made.

The statement, to be true, need not be absolutely, totally, or literally true, but must be substantially true. A statement is considered to be true if it is substantially true or the gist of the statement is true.

INSTRUCTION NO. 29A

In order to determine whether the statements at issue were true or false, you must determine which party owned the UNIX and UnixWare copyrights, existent as of the date of the Asset Purchase Agreement, at the time the statements were made.

To determine which party owned the UNIX and UnixWare copyrights, existent as of the date of the Asset Purchase Agreement, you should consider the Asset Purchase Agreement and the amendments thereto. I will now provide you instructions on how you should interpret these agreements.

INSTRUCTION NO. 30A

Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together. The contracts need not have been executed on the same day to be parts of substantially one transaction.

Where contracts are made at different times, but where the later contract is not intended to entirely supersede the first, but only modify it in certain particulars, the two are to be construed as parts of one contract, the later superseding the earlier one where it is inconsistent with the earlier one.

Here, the amendments, including Amendment No. 2, must be considered together with the Asset Purchase Agreement as a single document. The language of the amendments, including Amendment No. 2, controls whenever its language contradicts the Asset Purchase Agreement.

INSTRUCTION NO. 31A

In deciding what the terms of a contract mean, you must decide what the parties intended at the time the contract was created. You may consider the usual and ordinary meaning of the language used in the contract as well as the circumstances surrounding the making of the contract.

With respect to your consideration of the agreements at issue here, where contract terms are clear they should be given their plain and ordinary meanings.

In deciding what the words of a contract meant to the parties, you should consider the whole contract, not just isolated parts. You should use each part to help you interpret the others, so that all the parts make sense when taken together.

You should assume that the parties intended the words in their contract to have their usual and ordinary meaning unless you decide that the parties intended the words have a special meaning.

INSTRUCTION NO. 32

With respect to who owns the copyrights at issue, you may consider what is called the "extrinsic evidence" of the intent of the parties to the amended Asset Purchase Agreement. Extrinsic evidence is the evidence of what parties to a contract intended apart from the language they used in the contract.

One type of extrinsic evidence is testimony or documents showing what the people who were negotiating the contract said or did or understood at the time of the transaction.

Another type of extrinsic evidence is called the parties' "course of performance." Course of performance is how the parties interpreted and applied the terms of the contract after the contract was created but before any disagreement between the parties arose.

INSTRUCTION NO. 33B

In determining which party owns the property at issue, and your consideration of the amended Asset Purchase Agreement, you may consider the nature of a copyright.

Copyright is the exclusive right to copy. The owner of a copyright has the exclusive right to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.

The term "owner" includes the author of the work, an assignee, or an exclusive licensee. In general, copyright law protects against production, adaptation, distribution, performance, or display of substantially similar copies of the owner's copyrighted work without the owner's permission.

A copyright owner may enforce these rights to exclude others in an action for copyright infringement. Even though one may acquire a copy of the copyrighted work, the copyright owner retains rights and control of that copy, including uses that may result in additional copies or alterations of the work.

Possession of certificates of copyright registrations is immaterial to ownership of the copyrights, but may be considered for other purposes, such as the intent of the parties.

INSTRUCTION NO. 34A

A copyright owner may transfer, sell, or convey to another person all or part of the copyright owner's property interest in the copyright. The property interest in the copyright includes the right to exclude others from reproducing, preparing a derivative work, distributing, performing, displaying, or using the copyrighted work. To be valid, the transfer, sale, or conveyance must be in writing. The person to whom a right is transferred is called an assignee. The assignee may enforce this right to exclude others in an action for copyright infringement.

A copyright owner may also transfer, sell, or convey to another person any of the exclusive rights included in the copyright. To be valid, the transfer, sale, or conveyance must be in writing. The person to whom this right is transferred is called an exclusive licensee. An exclusive licensee has the right to exclude others from copying the work to the extent of the rights granted in the license and may bring an action for damages for copyright infringement.

Nonexclusive licenses, on the other hand, do not transfer copyright ownership and can be granted orally or implied from conduct. An implied license can only be nonexclusive. A nonexclusive licensee cannot bring suit to enforce a copyright.

An implied nonexclusive license may arise when (1) a person (the licensee) requests the creation of a work, (2) the creator (the licensor) makes the particular work and delivers it to the licensee who requested it, and (3) the licensor intends that the licensee-requestor copy and distribute his work.

INSTRUCTION NO. 35A

The third element of slander of title requires SCO to prove by clear and convincing evidence that Novell's statement disparaging the ownership of the UNIX and UnixWare copyrights, existent as of the date of the Asset Purchase Agreement, was made with "constitutional malice." That is, SCO must prove that the statement was published with: (1) knowledge that it was false; or (2) reckless disregard of whether it was true or false, which means that Novell made the statement with a high degree of awareness of the probable falsity of the statement, or that, at the time the statement was transmitted, Novell had serious doubts that the statement was true. Clear and convincing evidence leaves no substantial doubt in your mind that the constitutional malice is highly probable, as previously explained in Instruction No. 13.

In determining whether Novell published the statement knowing the statement to be false or with reckless disregard for the truth, you should take into account all the facts and circumstances. You should consider whether the statement was fabricated or the product of the party's imagination. You may also consider what the party knew about the source of the information and whether there were reasons for the party to doubt the informant's veracity, whether the information was inherently improbable, or if there were other reasons for the party to doubt the accuracy of the information.

In determining whether there was knowing falsehood or reckless disregard for the truth, however, it is not enough for you to find that the party acted negligently, carelessly, sloppily or did not exercise good judgment in researching, writing, editing, or publishing the statement. An extreme departure from the standards of investigating

and reporting ordinarily adhered to by responsible publishers does not, standing alone, constitute knowledge of falsity or reckless disregard for the truth. The reliance on one source standing alone does not constitute knowing falsehood or reckless disregard for the truth, even if other sources would be readily available, and even if, in applying reasonable reporting care, you believe those other sources should have been contacted.

Spite, ill will, hatred, bad faith, evil purpose or intent to harm does not alone support a finding of constitutional malice.

The mere fact that a mistake may occur does not evidence knowing falsehood or reckless disregard for the truth. Reckless disregard for the truth or falsity requires a finding that the person making the statement had a high degree of awareness that the statement was probably false, but went ahead and published the statement anyway. The test is not whether the person acted as a responsible publisher would have acted under the circumstances. While exceptional caution and skill are to be admired and encouraged, the law does not demand them as a standard of conduct in this matter.

Unless you find by clear and convincing evidence, under all the circumstances, that Novell acted knowing the statement to be false or with a high degree of awareness of its probable falsity, there can be no liability.

INSTRUCTION NO. 36A

The final element of a claim for slander of title requires a showing that the statement disparaging SCO's ownership of the UNIX and UnixWare copyrights, existent as of the date of the Asset Purchase Agreement, caused special damages to SCO.

This requires SCO to establish an economic loss that has been realized or liquidated, as in the case of lost sales. Special damages are ordinarily proved in a slander of title action by evidence of a lost sale or the loss of some other economic advantage. Absent a specific monetary loss flowing from a slander affecting the salability or use of the property, there is no damage. It is not sufficient to show that the property's value has dropped on the market, as this is not a realized or liquidated loss. The law does not presume special damages.

Special damages in the form of lost sales may be shown in two ways: (a) proof of the conduct of specific persons, or (b) proof that the loss has resulted from the conduct of a number of persons whom it is impossible to identify. There is a separate test you must apply for each.

First, when the loss of a specific sale is relied on to establish special damages, SCO must prove that the publication of the disparaging statement was a substantial factor influencing the specific, identified purchaser in his decision not to buy.

In order for the disparaging statement to be a substantial factor in determining the conduct of an intending or potential purchaser, it is not necessary that the conduct should be determined exclusively or even predominantly by the publication of the statement. It is enough that the disparagement is a factor in determining his decision, even though he is influenced by other factors without which he would not decide to act

as he does. Thus many considerations may combine to make an intending purchaser decide to break a contract or to withdraw or refrain from making an offer. If, however, the publication of the disparaging matter is one of the considerations that has substantial weight, the publication of the disparaging matter is a substantial factor in preventing the sale and thus bringing financial loss upon the owner of the thing in question.

The extent of the loss caused by the prevention of a sale is determined by the difference between the price that would have been realized by it and the salable value of the thing in question after there has been a sufficient time following the frustration of the sale to permit its marketing.

Second, in the case of a widely disseminated disparaging statement, SCO need not identify a specific purchaser and recovery is permitted for the loss of the market. This may be proved by circumstantial evidence showing that the loss has in fact occurred, and eliminating other causes.

A decline in stock price is not an appropriate claim for special damages.

INSTRUCTION NO. 38

You are entitled to award punitive damages if you deem them to be appropriate.

Before any award of punitive damages can be considered, SCO must prove by clear and convincing evidence that Novell published a false statement knowing it was false or in reckless disregard of whether it was true or false, and that Novell acted with hatred or ill will towards SCO, or with an intent to injure SCO, or acted willfully or maliciously towards SCO.

If you find that SCO has presented such proof, you may award, if you deem it proper to do so, such sum as in your judgment would be reasonable and proper as a punishment to Novell for such wrongs, and as a wholesome warning to others not to offend in a like manner. If such punitive damages are given, you should award them with caution and you should keep in mind that they are only for the purpose just mentioned and are not the measure of actual damage.

INSTRUCTION NO. 39

The fact that I have instructed you on damages does not mean that I am indicating that you should award any -- that is entirely for you, the jury, to decide.

Any damages you award must have a reasonable basis in the evidence. They need not be mathematically exact, but there must be enough evidence for you to make a reasonable estimate of damages without speculation or guesswork.

The burden is upon the party seeking damages to prove the existence and amount of its damages and that its damages were caused by the acts of the opposing party. You are not permitted to award speculative damages.

INSTRUCTION NO. 40B

You have heard evidence concerning specifics about the parties' rights and obligations under Section 4.16 of the amended Asset Purchase Agreement. You are instructed that those issues of specific rights and obligations under Section 4.16 are for the Court to decide and you are not to concern yourself with them. You may consider Section 4.16, as well as all other provisions, in interpreting the amended Asset Purchase Agreement.

INSTRUCTION NO. 41

It is the duty of the attorney on each side of the case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against any attorney or his or her client because the attorney has made an objection.

Upon allowing testimony or other evidence to be introduced over the objection of any attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of any such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness, the Jury must disregard the question entirely, and may draw no inference from the wording of it or speculate as to what the witness would have said if he or she had been permitted to answer any question.

INSTRUCTION NO. 42

During the course of the trial, I may have occasionally asked questions of a witness, in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions may have related.

INSTRUCTION NO. 43

A copy of these instructions will also accompany you to the Jury room. Do not write on the instructions.

INSTRUCTION NO. 44

You will notice during your deliberations that there may be gaps in the numbering of the instructions. The instruction numbers are for the convenience of the Court and the parties, and you are not to be concerned by them.

INSTRUCTION NO. 45

Upon retiring to the Jury room you must elect one of your members to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

The verdict must represent the collective judgment of the Jury. In order to return a verdict, it is necessary that each juror agree to it. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors for the mere purpose of returning a unanimous verdict.

Remember at all times, you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Your verdict must be based solely upon the evidence received in the case. Nothing you have seen or read outside of court may be considered. Nothing that I have said or done during the course of this trial is intended in any way to somehow suggest to you what I think your verdict should be. Nothing said in these instructions and nothing in any form of verdict prepared for your convenience is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the exclusive duty and responsibility of the Jury. As I have

told you many times, you are the sole judges of the facts.

The Court has prepared a verdict form for your convenience. You are instructed that your answers to the interrogatories on the verdict form must be consistent with the instructions I have given you and with each other.

When you have reached a unanimous agreement as to your verdict, your foreperson will fill in, date and sign the verdict form upon which you have unanimously agreed. When you have reached unanimous agreement as to your verdict, the foreperson shall inform the bailiff and you shall return to the courtroom.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the bailiff. But bear in mind that you are not to reveal to the Court or to any person how the Jury stands, numerically or otherwise, on the question before you, until after you have reached a unanimous agreement.

INSTRUCTION NO. 46

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely productive or good for a juror, upon entering the Jury room, to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his or her sense of pride may be aroused, and he or she may hesitate to recede from an announced position if shown that it is wrong.

INSTRUCTION NO. 47

During your deliberations, you are able as a group to set your own schedule for deliberations. You may deliberate as late as you wish or recess at an appropriate time set by yourselves. You may set your own schedule for lunch and dinner breaks.

However, I do ask that you notify the court by a note when you plan to recess for the evening.