

G. Green

1 A Yes.

2 Q And when you began in 1976 with
3 UNIX software licensing -- is that fair to
4 describe it that way?

5 A Well, UNIX software licensing and
6 other licensing, but including UNIX software
7 licensing.

8 Q Including UNIX software licensing
9 in 1976?

10 A Right.

11 Q So you have about ten years of
12 experience with licensing the UNIX software
13 operating system, correct?

14 A Yes.

15 Q And that was something you devoted
16 a substantial amount of your time during that
17 period to?

18 A Significant amount. I wouldn't say
19 substantial.

20 Q Okay. That's fair enough. So you
21 have a pretty good understanding of the role
22 of UNIX in AT&T's business during that time
23 frame, correct?

24 A Yes.

25 Q Would you agree with me that UNIX

1 was an important innovation for AT&T?

2 MR. KAO: Objection to the form.

3 A Yes.

4 Q And it was an innovation that AT&T
5 spent quite a significant and substantial
6 amount of resources on, correct?

7 MR. KAO: Objection to form.

8 A Yes.

9 Q Was the operating system owned
10 exclusively by AT&T?

11 A As far as I know, yes.

12 Q Okay. And AT&T owned the
13 copyrights for the UNIX product?

14 A As far as I know, yes.

15 Q And they owned -- AT&T owned the
16 source code for the product, correct?

17 A Yes, as far as I know.

18 Q I'm sorry?

19 A Yes.

20 Q And it also owned the methods and
21 the concepts and the technological innovation
22 that was contained within the UNIX product,
23 correct?

24 MR. KAO: Objection to the form.

25 A Yes.

1 Q During the period that you worked
2 with UNIX licensing from 1976 to 1986, is it
3 fair to say that the UNIX program was in high
4 demand?

5 MR. KAO: Objection to form.

6 A Well, not over the entire -- that
7 entire period, but it became in high demand
8 as time progressed.

9 Q Fair enough. At what point did it
10 become in high demand?

11 A I couldn't identify a specific
12 point.

13 Q Was it some time in the early
14 1980's, approximately?

15 A Well, it still doesn't -- I can't
16 pinpoint a specific point.

17 Q Okay.

18 A It just was a gradual increase in
19 demand.

20 Q Is it fair to say -- and I'm not
21 trying to put words in your mouth, so correct
22 me. You know this obviously better than I
23 do.

24 Is it fair to say that by 1985 the
25 UNIX operating system was in high demand

1 among licensees or potential licensees?

2 MR. KAO: Objection to the form.

3 A Yes.

4 Q And why was that the case?

5 MR. FELTOON: Does he know why
6 third-party licensees considered the
7 product desirable?

8 Q Did you understand why there was
9 high demand for UNIX licenses in that period?

10 A Well, because of its -- its
11 capabilities.

12 Q Okay. And what were those unique
13 capabilities?

14 A I'm not the one to answer that
15 question.

16 Q Okay. Do you have any
17 technological background?

18 A Yes.

19 Q What is your technological
20 background?

21 A Bachelor's degree in electrical
22 engineering and a number of years working as
23 a development engineer for Western Electric.

24 Q And development engineer in what
25 department of Western Electric?

1 A Yes.

2 Q And UNIX -- I'm sorry, AT&T
3 permitted licensees to develop modifications
4 or derivative works based on that source
5 code?

6 MR. KAO: Objection to form.

7 Q Is that correct?

8 A Yes.

9 Q And in fact, many licensees did
10 create such derivatives or modifications
11 based on the source code, right?

12 MR. KAO: Objection to the form.

13 A Yes.

14 Q Who were the -- that you know of,
15 were the licensees that created some
16 derivatives or modifications?

17 MR. KAO: Objection to the form.

18 A Many did. I couldn't begin to list
19 them all because I don't remember them.

20 Q Fair enough. Were IBM and Sequent
21 among those?

22 A From what I'm informed, yes.

23 Q Did you know that IBM and Sequent
24 had license agreements with AT&T before
25 Mr. Marriott provided you with those

1 A Yes.

2 Q And AT&T's licensing business
3 depended on its ability to protect that
4 intellectual property, is that fair to say?

5 A Yes.

6 Q Because if someone could just take
7 intellectual property and copy it, then there
8 wouldn't be any licensing business, is that
9 fair to say?

10 A With respect to something like
11 UNIX, yes.

12 Q And one of the important purposes
13 of the license agreements that you've alluded
14 to, the software licensing agreements, was to
15 ensure protection for the UNIX intellectual
16 property, correct?

17 A Yes.

18 Q UNIX devoted -- I'm sorry, AT&T
19 devoted substantial resources to creating and
20 modifying those license agreements?

21 MR. KAO: Objection to form.

22 A Yes.

23 Q And also to enforcing those
24 agreements?

25 A Yes.

1 copyright protections at that time?

2 MR. KAO: I object.

3 A Yes.

4 Q Were you aware copyright law
5 protected against non-literal or
6 substantially similar copying of code?

7 MR. KAO: Objection.

8 A I'm not sure at that point.

9 Q Okay. In any event -- whatever
10 your understanding was -- were there other
11 people in the licensing department who were
12 responsible for knowing about that part of
13 the intellectual property protections?

14 MR. KAO: Objection.

15 A Yes.

16 Q Who were they?

17 A Well, there were many lawyers at
18 AT&T who were involved in licensing, and
19 there were lawyers specifically involved in
20 copyright protection.

21 Q Was Marty Pfeffer one of the
22 lawyers who knew about the copyright
23 protections?

24 A He may have been.

25 Q These legal protections that we've

1 been talking about under copyright law and
2 trade secret law would have applied to AT&T
3 even without the benefit of these licenses,
4 correct?

5 MR. KAO: Objection to the form.

6 A Yes.

7 Q So these license agreements that
8 AT&T spent time on and required its licensees
9 to execute, is it fair to say that those were
10 designed to add to the protections that would
11 have been available without the agreements?

12 MR. KAO: Objection to form.

13 A I think I have trouble with the
14 word "add".

15 Q Okay. What's the trouble that you
16 have with that word?

17 A Well, AT&T had the protection of
18 copyright trade secret law, and the license
19 agreements just embodied that protection as
20 they were entered into.

21 Q Is it your understanding that the
22 license agreements were coterminous with the
23 protections that would have existed without
24 the license agreements?

25 MR. KAO: Objection to the form.

1 A I'm not sure what you're getting
2 at.

3 Q Okay. I guess what I'm asking is:
4 Is it your understanding that the contract
5 agreements provided exactly the same
6 protections that would have been available
7 even if the license agreements didn't exist?

8 MR. KAO: Objection to form.

9 A Well, I still don't understand your
10 point.

11 Q Well, it's just a question. What
12 I'm asking is -- you had made reference to
13 the intellectual property protections that
14 existed without the copyright -- without the
15 contracts, I'm sorry, and my question is
16 whether it's your understanding that the
17 contracts added to those protections or were
18 exactly the same as those protections or
19 whether they reduced the protections?

20 MR. KAO: Objection to the form.

21 A I don't -- I don't think I could
22 answer that question.

23 Q Okay. Why is that?

24 A I just don't understand how to
25 answer it.

1 Q Okay. Do you not understand the
2 question or is it that you don't know the
3 answer to the question? I'm just trying to
4 get a clear answer on this.

5 A I would say I don't know the
6 answer.

7 Q Okay. Fair enough. Were there
8 people within AT&T who would have been in a
9 better position to answer that question for
10 the time frame that you were working with
11 UNIX licensing?

12 A I don't know.

13 Q Now, in this license program that
14 we've talked about, AT&T was making its
15 source code available to hundreds of
16 technology companies; is that correct?

17 A Roughly, yes.

18 Q Okay. And is it fair to say that
19 in doing that, AT&T contemplated there were
20 risks involved in giving out its source code
21 and its software to all of these high tech
22 companies?

23 A Yes.

24 Q And is that one of the things that
25 the license agreements was designed to

1 address --

2 MR. KAO: Objection to form.

3 A Yes.

4 Q -- those risks? I'm just trying to
5 clarify the question.

6 A Yes.

7 Q And how did the license agreements
8 deal with those risks?

9 A There were specific provisions in
10 the license agreements relating to rights to
11 use and confidentiality.

12 Q Through the licensing program --
13 we'll just take one example -- one licensee
14 could take the source code and go off and
15 develop modifications and derivatives based
16 on the UNIX source code, right?

17 A Yes.

18 Q That was a contractual right that
19 they were given under the license agreements?

20 A Yes.

21 Q And there was -- they could go off
22 and -- the licensee could go off and do this
23 behind closed doors, could develop
24 modifications and derivatives over a
25 prolonged period of time through the license

1 agreements, correct?

2 A Yes.

3 Q How did -- did AT&T appreciate that
4 there were risks in letting that kind of
5 development process go on with the valuable
6 UNIX source code?

7 MR. KAO: Objection to form.

8 A I believe they did, yes.

9 Q And was that an important thing for
10 AT&T? Your understanding from your work in
11 the licensing, was it an important thing for
12 AT&T to know what those licensees were doing
13 with the source code?

14 A Yes.

15 Q Okay. How did AT&T go about
16 protecting its source code and its
17 intellectual property during that process,
18 during that developmental process?

19 A I don't have a good answer to that
20 question. I don't know.

21 Q Okay. Were there other people
22 within AT&T who -- that you know of who would
23 have been in a better position to answer that
24 question?

25 A No.

1 A Yes.

2 Q On page 18, the bottom of page 18,
3 the question is, "And if your code was not
4 part of the product," and Mr. Frasure says,
5 "Well, if it was used as part of the
6 development -- I really need to be careful
7 here on words, I guess. If the source code,
8 the UNIX source code was -- was required, was
9 used to generate the enhancement, was
10 required to have the -- the rest of the
11 enhancements work, then we had an interest in
12 it."

13 "It's been a long time. I'm not
14 sure of the right -- the right key words to
15 use, but we went through those discussions
16 with them and what we felt the, you know, the
17 agreement said."

18 "We also discussed contractor
19 provisions which allowed a licensee to
20 contract with someone to develop software and
21 then when that development was done,
22 everything had to come back to them and we
23 expressed concern, I guess, with -- Otis and
24 I used the term mental contamination, that if
25 you had been exposed to the source code and

1 its methods and concepts, even though you
2 give something back to the -- the licensee,
3 there was -- there was concern there that
4 someone could go off on their own and develop
5 what they thought was their own product but
6 really using the methods and concepts and
7 techniques that were in the product that they
8 had previously used."

9 Let me break this down. Was AT&T
10 concerned that someone could go off on their
11 own and develop what they thought was their
12 own product but really using the methods and
13 concepts and techniques that were in the
14 product that was licensed to them?

15 MR. KAO: Objection to the form.

16 A At one time they probably were.

17 Q Was that a concern as of the time
18 of this meeting in California that you
19 attended?

20 A It may have been. I don't recall
21 specifically.

22 Q Do you remember Mr. Frasure
23 discussing this idea of mental contamination
24 at that meeting in California?

25 A I know the concept was discussed

1 from time to time, but I don't remember the
2 context of that meeting.

3 Q When did you remember that concept
4 of mental contamination having been
5 discussed?

6 A I can't pin it down to any
7 particular time or conversation.

8 Q Who was involved in those?

9 A I can't pin that down.

10 Q Was that a term that you heard Otis
11 Wilson use?

12 A I don't remember.

13 Q Okay. Do you agree -- first of
14 all, do you remember Mr. Frasure -- directing
15 your attention to the first full -- second
16 full paragraph of the answer that I just
17 read, do you remember Mr. Frasure saying at
18 that meeting that if the source code was used
19 to generate the enhancement, then the -- AT&T
20 had an interest in the enhancement?

21 A No.

22 Q Is that a statement that's
23 consistent with AT&T's policy with respect to
24 its intellectual property protections at that
25 time?

1 A Yes.

2 Q Referring you to now to page 20 of
3 the document that's in front of you, the
4 exhibit from Mr. Frasure's testimony, and I
5 want to just direct you to the end of the
6 answer in the middle of page 20. He says --
7 referring to licensees -- "If they're
8 developing a product with the benefit of UNIX
9 or perhaps they have used it for -- for a
10 number of years, ten years, and then they
11 think they're going to go off and develop
12 something on their own that's an operating
13 system that may look like UNIX, we had -- we
14 expressed our concern that -- that we had an
15 interest in that product."

16 Do you remember that subject matter
17 being discussed at the meeting in California
18 that you attended?

19 A Not specifically, no.

20 Q Is Mr. Frasure's statement
21 concerning AT&T's interest in that product
22 accurate as far as your understanding of
23 AT&T's intellectual property protections?

24 MR. KAO: Objection to the form.

25 A I think it reflects a concern that

1 we had, yes.

2 Q And do you agree that AT&T had an
3 interest in products that were developed with
4 the benefit of UNIX even if the licensee were
5 to go off and develop that product on its own
6 based on that exposure?

7 MR. KAO: Objection to the form.

8 A Well, I think it depends on how you
9 define interest.

10 Q Okay. What interest do you think
11 AT&T had in that product?

12 A Well, certainly they were
13 interested in the fact that somebody was
14 doing something like that, and then I'm sure
15 they would be concerned about whether any of
16 AT&T's intellectual property was involved in
17 the result.

18 Q Well, when you were at AT&T, was
19 that something that you were interested in
20 determining, whether licensees were
21 developing products based on their exposure
22 to the UNIX operating system?

23 A I wasn't specifically interested in
24 that myself.

25 Q Okay. Were there other people at

1 attention to the first page of the software
2 agreement, paragraph 4, is that a term of the
3 agreement that you're familiar with?

4 A Yes.

5 Q Okay. Is that what's commonly
6 referred to as a merger or an integration
7 clause?

8 A Yes.

9 Q And what is the intent of that
10 provision?

11 MR. KAO: Objection to the form.

12 A To make clear that the agreement
13 and its supplements constituted the entire
14 agreement. That's what the language says.

15 Q And that was AT&T's intent with
16 respect to this provision?

17 A Yes.

18 Q Does that -- is it fair to say,
19 then, that under this provision, AT&T's
20 intent was that Sequent's rights and
21 obligations would be governed only by
22 agreements that Sequent executed with AT&T?

23 MR. KAO: Objection to the form.

24 A Would you state that question
25 again, please?

1 way he's going to understand the
2 question after that colloquy, so let's
3 go back.

4 Q My question is: Was it AT&T's
5 intent that Sequent's rights and obligations
6 would be governed only by the agreements that
7 Sequent executed with AT&T?

8 MR. KAO: Objection to the form.

9 A With respect to UNIX's -- the
10 UNIX's software covered by the agreement,
11 yes.

12 Q And is it also fair to say that
13 AT&T's intent was that the rights and
14 obligations of Sequent would be governed only
15 by what was contained within the written
16 agreements that Sequent executed --

17 MR. KAO: Objection to the form.

18 A Yes.

19 Q -- as opposed to oral
20 representations?

21 A Yes.

22 Q Are you aware of a standard
23 provision in the license agreements of a most
24 favored nation clause?

25 A Yes.

1 Q Okay. Do you remember what that
2 was?

3 A Yes.

4 Q What was it?

5 A It's a newsletter that the Otis
6 Wilson organization put out periodically to
7 all licensees.

8 Q Okay. And was Mitzi Bond the
9 editor of that newsletter?

10 A I don't know.

11 Q Do you remember whether you had any
12 involvement with providing material for the
13 newsletter or editing material that went into
14 the newsletter?

15 A I assume I probably did, but I
16 don't remember specifically doing it.

17 Q You don't have any specific
18 recollections of anything that you
19 contributed?

20 A No.

21 Q Is that accurate?

22 A It is accurate.

23 Q Thank you. It's another one of
24 those double negatives.

25 Was it AT&T's intent that

1 statements made in The \$ Echo newsletter
2 created binding letter rights or obligations
3 with respect to the recipients of the
4 newsletter?

5 MR. KAO: Objection to the form.

6 A I don't believe so, no.

7 Q The \$ Echo newsletter, was it
8 intended to modify any of the license
9 agreements or side letter agreements?

10 A I don't believe so, no.

11 Q Did you have conversations with
12 Mitzi Bond about the license agreements?

13 A I don't remember.

14 Q How about Dave Frasure?

15 A Yes.

16 Q And Otis Wilson?

17 A Yes.

18 Q And Evelyn Davis?

19 A I don't remember.

20 Q Burt Levine?

21 A Yes, later.

22 Q Later in the later days?

23 A Later days, yes.

24 Q Okay. And did your conversations
25 with Mr. Wilson and Mr. Frasure involve the

1 Q Was it -- you said at the beginning
2 of your answer that the contents included the
3 software files themselves and source code.
4 Would it be fair to say that AT&T's intent
5 was that software product, as was designed
6 here under paragraph 1.04, included not just
7 the source code itself, but also the ideas
8 and the methods and the concepts included
9 within the computer programs?

10 MR. KAO: Objection to the form.

11 A At one time that would have been
12 the case, yes.

13 Q All right. Do you have a specific
14 knowledge that at some point that changed?

15 A It developed over a period of time.
16 I think the idea changed with respect to UNIX
17 software.

18 Q Can you explain what your best
19 recollection of this -- of what that
20 development process was and when that change
21 occurred?

22 A Just that -- I think it became
23 apparent that it was going to be difficult to
24 determine what methods and concepts were in
25 the context of computer software because of

1 the general kinds of knowledge that people
2 were developing about programming and
3 computer code in general.

4 Q Okay. And that change or process
5 of change that you alluded to happened after
6 you left the -- after 1986?

7 MR. KAO: Objection to the form.

8 Q Is that accurate?

9 A I'm not sure of when it actually
10 resulted in the change in form or in the
11 language.

12 Q What I'm asking about is not about
13 the language itself, but about this process
14 that you referred to in which there was a
15 change in AT&T's view of the methods and
16 concepts protection. Is that something that
17 happened before 1986 or after 1986?

18 A I think it was happening before
19 1986.

20 Q And how do you know that?

21 A Well, I was involved in the
22 licensing program at that time.

23 Q And did you have conversations with
24 other people about that?

25 A I'm sure I did.

1 Q Who did you discuss it with?

2 A Numerous people.

3 Q Okay. So among those numerous
4 people, who would those have been?

5 A I'm sure Otis Wilson and Dave
6 Frasure.

7 Q Anybody else that you remember?

8 A And probably the attorneys I
9 mentioned earlier.

10 Q Dave Hurwitz?

11 A Yes.

12 Q Anybody else?

13 A Probably Jim Trainor.

14 Q Anybody else that you recall?

15 A There were probably others, but I
16 don't remember.

17 VIDEO OPERATOR: This concludes
18 videotape number 1. The time is 11:42.

19 (Brief recess taken.)

20 VIDEO OPERATOR: We're back on the
21 record. This is the beginning of tape
22 number 2. The time is 11:51.

23 Q Is it fair to say that one of your
24 important jobs as a licensing attorney for
25 AT&T was to ensure that the language of the

1 license agreements reflected AT&T's intent?

2 MR. KAO: Objection to the form.

3 A Yes.

4 Q And is it also fair to conclude
5 that when the same language appears in
6 different agreements, that the intent behind
7 that language from AT&T's standpoint is the
8 same?

9 MR. KAO: Objection to form.

10 A Yes.

11 Q If the intent changed, then your
12 job was to change the language to reflect
13 that intent, correct?

14 A Yes.

15 Q As of 19 -- April of 1985 when the
16 Sequent agreement was executed, did software
17 product, as defined in paragraph 1.04,
18 include just the source code or did it also
19 include files and concepts and methods and
20 ideas that were embodied in the computer
21 programs?

22 MR. KAO: Objection to form.

23 MR. FELTOON: Are you talking
24 about -- objection. Are you talking
25 about subjective understanding or --

1 product identified in the one or more
2 supplements hereto, solely for licensee's own
3 internal business purposes and solely on or
4 in conjunction with designated CPU's for such
5 software product."

6 What was AT&T's intent with respect
7 to the requirement that licensees only use
8 software products for their own internal
9 business purposes?

10 A The intent was that the use of
11 would be for the licensee's own business
12 needs and not to provide some kind of service
13 for other people on the licensee's computers.

14 Q Okay. Is that one of the reasons
15 why the sublicensing agreements were needed
16 for licensees to be able to distribute the
17 product in object code format to others?

18 A It's one of the reasons, yes.

19 Q Okay. And what was the reason for
20 the limitation on the use being only in
21 conjunction with designated CPU's for such
22 software product?

23 A Most of the software agreements, as
24 I recall, had provisions for designating
25 CPU's on which the software could be used,

1 and the fees for use of the software were
2 based on how many designated CPU's there
3 were.

4 Q So one of the reasons, at least,
5 one of the important reasons was to ensure
6 that AT&T was paid for the licensee's full
7 use of the licensed product?

8 MR. KAO: Objection to the form.

9 A Yes.

10 Q The next sentence of 2.01 says
11 that, "Such right to use includes the right
12 to modify such software product and to
13 prepare derivative works based on such
14 software product."

15 What was the intent, AT&T's intent,
16 with respect to that provision?

17 MR. FELTOON: To the portion that
18 you read?

19 MR. ESKOVITZ: Yes.

20 A I think just what it says, that the
21 licensee could modify the product and prepare
22 works based on the product.

23 Q And what is your understanding or
24 what was AT&T's intent -- strike that.

25 What was AT&T's intent with respect

1 to the meaning of the term "derivative
2 works"?

3 A Something that was based on the
4 licensed product, and that would be
5 considered to probably be in a variation of
6 the product or would somehow include the
7 product or part of the product.

8 Q Okay. And when you say include
9 part of the product, would you include in the
10 meaning of product the ideas, methods and
11 concepts of that product?

12 A At some point in time, yes.

13 Q As of 1985, was that true?

14 A Probably, yes.

15 Q And the next provision -- the next
16 clause of that -- the end of 2.01 says,
17 "Provided the resulting materials are treated
18 hereunder as part of the original software
19 product.."

20 Let me just break it down. I want
21 to ask you about a couple different portions
22 of that. First of all, would you agree with
23 me that when the 2.01 refers to resulting
24 materials, that it's referring to the
25 derivative works or modifications that are

1 created through the exercise of the right
2 that's provided at the beginning of this
3 sentence?

4 A Yes.

5 MR. KAO: Objection to the form.

6 Q And when this provision talks
7 about -- uses the term "hereunder", is it
8 your understanding and was it AT&T's intent
9 that hereunder meant under the entire
10 software agreement?

11 MR. KAO: Objection to form.

12 A Yes.

13 Q Not just with respect to hereunder
14 meaning 2.01 itself?

15 A Under the entire agreement, yes.

16 Q Okay. And when it says that the
17 resulting materials must be treated hereunder
18 as part of the original software product,
19 what's your understanding of what that meant?

20 A That the resulting materials should
21 be treated like the software product itself.

22 Q Okay. I'm sorry, I didn't mean to
23 cut you off.

24 A That's all right.

25 Q And so any restrictions under the

1 software agreement that applied to the
2 original licensed software product, it was
3 AT&T's intent that the resulting materials
4 would be treated in the same way?

5 A Yes.

6 Q So that applies, then, to any
7 derivatives or modifications that are based
8 on the original software product?

9 A Under this provision, yes.

10 Q Is there any requirement in the
11 license agreement that such modifications or
12 derivatives have to include literally copied
13 source code from the original product?

14 A In this form of the agreement, no.

15 Q So with respect to the Sequent
16 agreement, a derivative or a modification did
17 not need to include source code --

18 MR. KAO: Objection to form.

19 Q -- from the original licensed
20 product?

21 MR. FELTOON: And you're asking
22 what the contract says or AT&T's intent?

23 MR. ESKOVITZ: AT&T's intent.

24 A The intent, depending on the time
25 that we're talking about.

1 Q I'm just talking about this
2 particular agreement in April of 1985, the
3 Sequent agreement.

4 A I think at that time we were -- we
5 were getting to the point where we understood
6 that the derivative works and/or resulting
7 materials would have to have included source
8 code to be protected under the agreement.

9 Q Okay. Was any change made to the
10 agreement to reflect that?

11 A In -- later in 1985, yes.

12 Q And are you referring to the
13 ownership language that was included later in
14 the agreements in 1985?

15 A There's ownership language and
16 there's also language that talks about a
17 portion of the licensed product -- of the
18 software product would have to be in the
19 derivative work or whatever to come under the
20 agreement.

21 Q Okay. Well, we'll look at that
22 language in a moment. Let's just stick with
23 this license agreement itself, the Sequent
24 agreement executed in April of 1985.

25 My question is that with respect to

1 this particular agreement, did a derivative
2 work or modification have to include the
3 literally copied source code?

4 MR. KAO: Objection to the form.

5 MR. FELTOON: Again, so the witness
6 isn't confused, are you asking him does
7 it say that in here or are you asking
8 whether it was AT&T's understanding?

9 MR. ESKOVITZ: Well, let's break it
10 down.

11 Q Does it say that in here, first of
12 all?

13 MR. FELTOON: Well, I'll stipulate
14 it doesn't say that.

15 MR. ESKOVITZ: I don't know that I
16 need your stipulations on this.

17 MR. FELTOON: Well, it doesn't say
18 it, so you can ask him --

19 MR. ESKOVITZ: Right, it doesn't
20 say it.

21 MR. FELTOON: -- a question about
22 his intent.

23 A Start again, please.

24 Q Okay. Nowhere in -- we can all
25 agree, I think, that nowhere in this

1 agreement does the protection for derivatives
2 or modifications -- is it limited to those
3 derivatives or modifications that include
4 literally copied source code, correct?

5 MR. KAO: Objection to the form.

6 A No, there isn't. Yes, that is
7 correct.

8 Q Now, with respect to AT&T's intent,
9 was that intent different than what the
10 language that we just agreed to says?

11 MR. KAO: Objection to form.

12 A Well, I think you could either say
13 it has intent or understanding of what was
14 meant by these words at that time.

15 Q At that time, meaning in April of
16 1985?

17 A Yes.

18 Q And the understanding of what these
19 terms meant changed over time. Is that your
20 testimony?

21 A No, I'm not saying that at this
22 point. I'm saying that what we understood in
23 the sense of something being a derivative
24 work or something being a modified version of
25 the software product is that those couldn't

1 agreements?

2 A Well, that's a very general
3 statement, and he probably did that later in
4 that decade, but I don't believe he had any
5 involvement earlier.

6 Q When you say later in that decade,
7 are we talking about in the 1984, 1985 time
8 frame when USL was formed?

9 A After 1986.

10 Q Okay. Do you know what his
11 involvement was after '86?

12 A Not specifically, no.

13 Q Do you have any general
14 understanding of what it was?

15 A Only that -- from the position that
16 he held he must have had some involvement.

17 Q Do you know one way or the other
18 whether he had primary responsibility for
19 those matters?

20 A I think he did, but I don't know
21 definitely.

22 MR. FELTOON: Just so the record is
23 clear, when? Primary responsibility
24 when, after '86?

25 Q Whenever you know that he was

1 involved.

2 A Well, later in the '80s. After
3 1986 I think he probably did have primary
4 responsibility, legal responsibility.

5 Q Who was the person with primary
6 legal responsibility before that?

7 A I would say it was probably Jim
8 Trainor directly before that.

9 Q And how long was Mr. Trainor
10 primarily responsible for overseeing the UNIX
11 licenses?

12 A I can't give a precise date for the
13 changeover. There are a lot of things going
14 on back then. And I can't remember however
15 they fit it together.

16 Q Understood. I'm just asking for
17 your best recollection.

18 What's your best recollection of
19 when Mr. Trainor would have been primarily
20 responsible for the licensing agreements?

21 A I guess when we moved from North
22 Carolina back to New Jersey, which would have
23 been in the middle of 1986.

24 Q That would have been the end of his
25 tenure?

1 A Roughly.

2 Q And when did he begin?

3 A When did he begin?

4 Q Yes. When did he begin having
5 primary responsibility for the oversight of
6 the license agreements?

7 A Well, I can't pin the date down,
8 but it was probably in the early '80s.

9 Q 1981, '82?

10 A I can't pin it down any more than
11 that.

12 Q It would have been when he started
13 supervising you?

14 A Yes.

15 Q Let me direct your attention to
16 paragraph 6 of the Pfeffer declaration. In
17 the Pfeffer declaration, he cites the
18 language from the standard license agreement
19 that we looked at from the Sequent agreement,
20 2.01, and he says, "I know that this language
21 set forth the parties' intent and agreement
22 that the software product licensed and
23 protected under the terms of the license
24 agreements included the full content of all
25 of the resulting materials created over time

1 from the licensees' exercise of their
2 contractual right to modify and to prepare
3 derivative works based on the original
4 licensed material, including the UNIX source
5 code and all of the proprietary information
6 reflected or embodied therein."

7 Do you agree with that statement
8 concerning AT&T's intent with respect to
9 2.01?

10 MR. KAO: Objection to the form.

11 A Give me a minute to read this.

12 Q Sure.

13 (Witness reviewing.)

14 A I think that was true at one time,
15 but as things developed and we began to
16 understand what licensees were doing and
17 needed to be able to do, that we realized
18 that we didn't have the right to control
19 derivative works or works that were
20 subsequent to the -- or that were developed
21 based on the software product.

22 Q Was this -- the statement here
23 concerning the intent of 2.01, is that
24 accurate as least as of April of 1985 when
25 the Sequent agreement was executed?

1 A I would say probably not.

2 Q Okay. Why is that?

3 A Because I think by the time the
4 Sequent agreement was entered into, we were
5 beginning to understand that the -- we were
6 going to have to be able to find the software
7 product itself in the derivative works to be
8 able to control it.

9 Q Okay. And when you say the
10 software product itself --

11 A Or part of the software product
12 itself.

13 Q When you say the software product
14 itself or part of the software product
15 itself, what do you mean by the software
16 product?

17 A The code, the source code.

18 Q Just the literally copied source
19 code?

20 A Generally, yes. There may have
21 been other things that were considered
22 confidential at that time, possibly
23 descriptions in the manuals. I don't really
24 recall, but I wouldn't want to pin it down
25 just to the source code.

1 MR. ESKOVITZ: I'm trying to
2 understand it.

3 Q Can you explain how that's
4 consistent with your testimony before about
5 methods and concepts having been protected
6 with respect to definitive works?

7 A Well, I think methods and concepts
8 is a different subject in that even without
9 anybody developing derivative works, there
10 could be methods and concepts that could be
11 disclosed that at some point would have
12 created a breach of the agreement, but as
13 time progressed, the idea that there were
14 methods and concepts in software that could
15 be protected as trade secrets, particularly
16 with the UNIX software, became questionable.

17 Q I see. So in terms of
18 understanding the extent of the derivatives
19 and modifications protection, if a licensee
20 took the original UNIX code, studied it, and
21 created a modification in which it
22 paraphrased or copied everything about the
23 concepts, the ideas, the structure, the
24 organization, the methods from the original
25 licensed product but did not copy, literally

1 copy the source code in the original licensed
2 product, is it your view that that would not
3 have been covered under the license
4 agreement?

5 A Again, I would say that depends on
6 when that was done.

7 Q Okay. As of April 1985 if that was
8 done?

9 A I think at that time we would have
10 considered that that would be a violation of
11 the agreement if somebody had done that or
12 such -- such a product would have been
13 covered by the agreement.

14 Q Right. And at what point did that
15 kind of a product no longer receive the
16 protection of the agreement?

17 A I can't -- I can't put down a point
18 in time.

19 Q Okay. Was it before the middle of
20 1986 when you left Greensboro?

21 A I can't pin that down.

22 Q Do you have any way of identifying
23 by reference in documents or anything else
24 when that happened?

25 A I don't remember when the language

1 was changed in the agreement that took it
2 out. It was taken out of the IBM agreement
3 in the side letter, but eventually, it was
4 taken out of the agreement itself, but I'm
5 not sure when that happened.

6 Q But it wasn't taken out of the
7 Sequent agreement that you're looking at
8 here?

9 A I don't believe so. The language
10 is still in the Sequent agreement.

11 Q So the derivative or modification
12 that we discussed where source code would not
13 have been literally copied would have been
14 protected under the Sequent agreement?

15 MR. KAO: Objection to the form.

16 A If it would show you can use
17 methods and concepts that were present in the
18 original software product, yes.

19 Q And not just methods or concepts,
20 but also any kind of know-how or structure or
21 sequence or organization?

22 MR. KAO: Objection to the form.

23 A I think that was all included in
24 methods and concepts.

25 Q Okay. Let me show you the end of

1 Mr. Pfeffer's -- paragraph 6 in his
2 declaration where it says, "Accordingly,
3 under section 2.01, if a licensee created a
4 modification or derivative work based on the
5 original licensed product, then the agreement
6 treated the resulting work as if it had been
7 part of the original software product, and
8 any further modifications or derivatives of
9 that resulting work would be treated in the
10 same manner."

11 Do you agree with that statement?

12 A No.

13 Q What is it that you disagree with
14 about that statement?

15 A This may have applied earlier when
16 we still considered that modification of a
17 derivative work would have to include a
18 portion of the software product, but when we
19 became more aware of the fact that that
20 wasn't always the case, then -- so it's
21 really not clear with respect to what
22 happened over time.

23 Q Let me just make sure -- maybe you
24 misspoke. I just want to make sure I'm
25 clear.

1 If I understand your testimony --
2 and I'm sure everybody will jump all over me
3 if I get it wrong, so I'll try and get it
4 straight and accurately as possible -- it's
5 your view that what was included within
6 software product changed over time such that
7 earlier on it didn't need to include source
8 code -- a derivative or modification didn't
9 need to include literally copied source code
10 but at some later point in time it did; is
11 that accurate?

12 MR. KAO: Objection to the form.

13 A No.

14 Q Can you explain?

15 A Earlier, I think it was our view
16 that a derivative work or modification of our
17 software product would have to include some
18 software product.

19 Q Meaning literally copied source
20 code or methods and concepts, et cetera?
21 That's what I'm getting at because you keep
22 using the term "software product".

23 A Either/or, I think.

24 Q Okay.

25 A But as time went on and it became

1 clear that there could be works that would
2 meet the definition of software -- that would
3 fall under modification or derivative work,
4 that -- well, I have to start over again.

5 Ask me a question again so that I
6 get your intent clear.

7 Q Yes, absolutely. I believe you've
8 testified that for a derivative or for a
9 modification to have been covered by the
10 license agreement, originally AT&T did not
11 require that that derivative or modification
12 actually include literally copied source
13 code, and then at some point later on, the
14 understanding and intent of AT&T changed in
15 that regard.

16 Is that -- have I characterized
17 that accurately?

18 A Yes.

19 Q Okay. What I'm asking is: During
20 the first period of time when a derivative or
21 modification protected by the license
22 agreement did not need to include literally
23 copied source code, is it accurate that the
24 agreement treated resulting work under 2.01
25 as if it had been part of the original

1 contract, does what we've talked about in
2 terms of the restrictions on derivatives or
3 modifications that do not include literally
4 copied source code apply?

5 MR. KAO: Objection to the form.

6 MR. ESKOVITZ: I'll rephrase that
7 question. It was way too long.

8 Q Looking at an agreement that
9 follows the same form as the Sequent
10 agreement -- you have the Sequent agreement
11 in front of you, right?

12 A Yes.

13 Q Let's just talk about the Sequent
14 agreement. Under this agreement, the
15 internal use restriction that we've been
16 talking about, internal business use, that
17 would apply to a derivative or a modification
18 that did not include literally copied source
19 code but did include methods and consents
20 from the original licensed product?

21 MR. KAO: Objection to the form.

22 Q Is that correct?

23 A During the time when we considered
24 the methods and concepts could be protected,
25 yes.

1 Q And looking at the Sequent
2 agreement that you have in front of you, the
3 Sequent agreement was executed during that
4 time, correct?

5 A Yes. It still includes the
6 language, methods and concepts language.

7 Q Right. Let me just go back to that
8 hypothetical I gave you.

9 If a licensee has access to the
10 UNIX code and develops a modification or a
11 derivative under this Sequent agreement but
12 does not include the literally copied source
13 code but does include methods, concepts,
14 structures, organizations, other covered
15 intellectual property, I think we agreed that
16 that derivative or modification would be
17 covered by the license agreement, correct?

18 MR. KAO: Objection to form.

19 A At which point in time?

20 Q Under this Sequent agreement?

21 A Yes.

22 Q Okay. And then that derivative or
23 modification work under this agreement would
24 be restricted to the licensee's internal
25 business purposes, used for internal business

1 purposes?

2 A Yes.

3 Q And the transfer restrictions under
4 the agreement would apply?

5 A Yes.

6 Q And the confidentiality provisions
7 of the agreement would apply?

8 A Yes.

9 Q And the export requirements would
10 apply?

11 A Yes.

12 Q And if, then, that licensee --
13 let's say Sequent -- develops another
14 modification or derivative through its own
15 developmental process of that original -- of
16 that derivative work, is the derivative of
17 that derivative covered by the license
18 agreement?

19 MR. KAO: Objection to the form.

20 A I think you'd have to know more
21 about the facts of what the derivative of the
22 derivative really was to understand that to
23 be able to answer that question.

24 Q Okay, fair enough. I'll give you
25 some more information. You asked for it.

1 The derivative or the resulting
2 work that we've been talking about in the
3 first instance would need to be treated as if
4 it was part of the original software product,
5 right?

6 A Yes.

7 Q Okay. So it's considered as if the
8 first derivative is treated exactly the same
9 as the original licensed product is, correct?

10 A Yes.

11 Q Okay. So now let's say that the
12 licensee develops a derivative or
13 modification from that original derivative
14 and methods or concepts or ideas are embodied
15 in that second derivative. Under 2.01, isn't
16 that second derivative required to be treated
17 as if it's part of the original software
18 product as well?

19 MR. KAO: Objection to form. I
20 don't think you added any information to
21 that. You just restated it.

22 MR. ESKOVITZ: "Objection to the
23 form" is all you have to say.

24 A If it's still based on the same
25 methods and concepts. I'm not sure that it

1 matters if it's a first derivative or a
2 second derivative or how many derivatives.
3 If you read the language, you would still
4 conclude that it would come under the
5 agreement under that kind of reading.

6 Q Right. Let me rephrase that
7 question, though. I understand what you're
8 saying about that.

9 My question is: If the first
10 derivatives embodied methods and concepts but
11 not literally copied source code, it needs to
12 be treated under 2.01 as if it were part of
13 the original software product, correct?

14 A Right.

15 Q So now it is as if it was UNIX
16 System 5, for example, then a derivative or
17 modification is created based on that
18 product, that derivative, and that new
19 derivative product includes methods or
20 concepts or other intellectual property from
21 the first derivative.

22 Is that alone enough for you to
23 know that the second derivative is covered by
24 the license agreement?

25 MR. KAO: Objection to the form.

1 MR. KAO: Objection to the form.

2 A I don't think I ever said that AT&T
3 changed its intent, but as time went on, AT&T
4 became aware of the fact that it needed to
5 clarify the language.

6 Q Okay. And so the intent did not
7 change?

8 A No.

9 Q Okay. At some point AT&T decided
10 that modifications or derivatives had to
11 include literally copied source code; is that
12 accurate?

13 A Yes.

14 Q Okay. So after that point,
15 whenever that was that that point was made,
16 after that decision was made, does that mean
17 that a licensee could take the UNIX product,
18 could copy all of the ideas, the methods, the
19 concepts, the organization, structure, the
20 sequences, all of the intellectual property
21 within the original licensed UNIX product,
22 but so long as they didn't literally copy
23 verbatim the source code from the original
24 licensed product, that that licensee could do
25 whatever it wanted with its modification or

1 derivative?

2 MR. KAO: Objection to the form.

3 A I think that eventually that may
4 have been the case.

5 Q Okay. You know enough about
6 computer programming to know how easy it is
7 to copy a program without literally copying
8 verbatim the source code of that program?

9 MR. KAO: Objection to the form.

10 A Well, I'm not sure that I know that
11 much about programming.

12 Q Okay.

13 A I know something about programming,
14 but when you -- when you talk about something
15 like the UNIX operating system, I'm out of my
16 depth.

17 Q Okay. Are you in your depth or are
18 you out of your depth in terms of do you know
19 if it's easy for just a competent programmer
20 to copy an operating system or copy parts of
21 an operating system without literally copying
22 verbatim the source code in that -- in that
23 software product?

24 MR. KAO: Objection to the form.

25 A I wouldn't want to make a judgment

1 like that.

2 Q Okay. Is that something that would
3 have informed your -- your understanding of
4 that would have informed your decision making
5 as a lawyer in the sense of your
6 responsibility to protecting the intellectual
7 property of the original licensed UNIX
8 product?

9 MR. KAO: Objection to the form.

10 A I think if that had been a
11 question, I would have had to have obtained
12 advice from somebody how to answer that
13 question.

14 Q During the course of your work in
15 the UNIX licensing group, was it ever a
16 concern that it would be easy for a licensee
17 to copy the intellectual property in UNIX
18 without literally copying the source code?

19 MR. KAO: Objection to form.

20 A I think it was a concern, but I
21 don't think anybody ever considered that it
22 would be easy to do that.

23 Q Do you know whether that concern
24 was the source of the mental contamination
25 rule that Otis Wilson articulated?

1 MR. KAO: Objection to the form.

2 A It sounds like it relates to it,
3 yes.

4 Q How did it relate to it?

5 A Well, talking about the same kind
6 of thing, that if somebody has exposure to
7 source code, then it's very difficult for
8 them to write corresponding source code
9 without being affected by what they know
10 about the original source code.

11 Q And was that concern about mental
12 contamination something that informed AT&T's
13 licensing intellectual property protections
14 in its licensing agreement?

15 MR. KAO: Objection to the form.

16 A Yes.

17 Q And is that something that Otis
18 Wilson was concerned about?

19 A Yes.

20 Q And David Frasure was concerned
21 about?

22 A Yes.

23 Q And it was something that they
24 communicated to AT&T's licensees as well?

25 MR. KAO: Objection to the form.

1 A I'm not sure that they communicated
2 it because, I mean, it was a concern that
3 they had, but it wasn't something that they
4 would talk to the licensees about
5 necessarily.

6 Q Okay. Do you remember whether that
7 subject matter was discussed and the idea of
8 mental contamination was discussed at that
9 Berkley meeting that you attended in
10 California?

11 A No.

12 Q You don't remember one way or the
13 other?

14 A No, I don't remember.

15 Q Do you have any reason to
16 dispute -- if David Frasure testified that
17 Otis Wilson and he communicated that -- their
18 concerns about mental contamination to the
19 University of California Berkeley at that
20 meeting, do you have any reason to dispute
21 that?

22 A No.

23 MR. ESKOVITZ: Okay. Is now a good
24 time for a lunch break?

25 MR. FELTOON: Yes.

1 Q That's what Mr. Frasure and
2 Mr. Wilson referred to as mental
3 contamination?

4 A Yes.

5 Q And that was a concern that was
6 embodied in the IBM side letter agreement
7 that you drafted as well, correct?

8 A Yes, yes.

9 Q Let me show you paragraph 12 of
10 this side letter agreement. Do you see that
11 provision?

12 A Yes.

13 Q Is this, generally speaking, a most
14 favored nation clause of the type you
15 referred to earlier?

16 A Yes.

17 Q And is this, again, like you were
18 talking about a provision that was intended
19 to refer to fees and pricing and other issues
20 regarding financial matters?

21 MR. KAO: Objection to form.

22 A Well, it covers that as other
23 things as well.

24 Q Okay. Was it intended to provide
25 IBM with most favored nation with respect to

1 intellectual property protections?

2 A It doesn't say that.

3 Q Okay. Was it your understanding
4 that it was intended to do that?

5 A No.

6 Q As of -- let me backtrack one
7 second because I just want to make sure I
8 understand what you're saying.

9 In February of 1985, methods and
10 concepts was removed from the IBM side letter
11 agreement?

12 A Yes.

13 Q Okay. Was that because AT&T could
14 not define what methods and concepts meant?

15 A I think it was because it was
16 negotiated in the course of that agreement.

17 Q Specifically, for the purposes of
18 the IBM side letter agreement, right?

19 A Yes.

20 Q It was something that IBM wanted
21 and AT&T was willing to do according to the
22 terms of the side letter?

23 A I think in terms of the other
24 provisions that were added in the side
25 letter, yes.

1 Q Is it true that as of February 1985
2 that AT&T was willing to relinquish any of
3 its protections for any of its licensees with
4 respects to methods and concepts?

5 A It may not have been. I think,
6 refreshing myself from this review we've done
7 in the last few minutes, it may very well be
8 that the language further down in 7.06(a)
9 relating to the contamination issue was part
10 of the negotiation of removing the methods
11 and concepts language because that was in a
12 way getting at the same thing, another way of
13 getting at the same thing.

14 Q A way of protections in
15 modifications or derivatives, for example,
16 the intellectual property contained within
17 the original licensed product even if the
18 literally copied source code was not
19 contained in those derivatives; is that
20 correct?

21 MR. KAO: Objection to the form.

22 A Say that again, please.

23 Q Sure, my question was -- you were
24 saying it's another way of doing the same
25 thing or something to that effect. My

1 question was: By doing the same thing or
2 ensuring the same protection, what you meant
3 was, and correct me if I'm wrong, was making
4 sure that the intellectual property other
5 than just the literally copied source code
6 was protected from misappropriation by AT&T's
7 licensees?

8 MR. KAO: Objection to the form.

9 A Yes. It was another way of getting
10 at the methods and concepts.

11 Q And is that consistent with the
12 fact that AT&T did not remove methods and
13 concepts from its standard agreement for many
14 years after the IBM side letter?

15 A I think it is.

16 Q So is it fair to say, then, that
17 when you take into account the entirety of
18 the IBM side letter together with the IBM
19 software agreement, that the protections that
20 AT&T had for its intellectual property under
21 those agreements was not limited just to the
22 literally copied source code in the licensed
23 product?

24 MR. KAO: Objection to form.

25 A I don't think that was our

1 A Yes.

2 Q The licensee then -- IBM in this
3 case -- goes out and develops its own product
4 having referred to the UNIX product but
5 without literally copying the UNIX source
6 code. Is the product that IBM develops in
7 that process covered by the license
8 agreement?

9 MR. KAO: Objection to form.

10 A I'm not sure if it is or not
11 because it may -- if IBM had done that, it
12 may be a -- considered a breach of this
13 language to do it, but when the resulting
14 software would be covered by the agreement in
15 the sense that other terms of the agreement
16 would apply to it, I can't say at the moment.

17 Q Okay. And the reason why you can't
18 say is because you cannot tell from a plain
19 reading of the agreement how it would be
20 treated?

21 A Well, either from a plain reading
22 of the agreement or time to really sit down
23 and analyze the question in terms of
24 everything that there is in the agreements
25 and the history and leading up to it and all

1 agreements protected?

2 MR. KAO: Objection to form.

3 A Or?

4 Q Or what?

5 A I'd say that this is too
6 complicated to come to snap judgments without
7 much more consideration and without knowing
8 much more about the facts of the particular
9 case to be able to come to a conclusion.

10 Q I don't think I asked you, but let
11 me go back to some background questions.

12 I don't think I asked you where you
13 went and what you did after 1986 when you
14 left Greensboro and came up to New Jersey.
15 Can you just explain what between 1986 and
16 1996 your responsibilities were?

17 A Okay. From 1986 until about 1990 I
18 was still in the licensing group on the legal
19 side, and dealt with other kinds of
20 agreements, patent license agreements,
21 technology transfer, that sort of thing.
22 There were probably some software agreements
23 even then, not necessarily UNIX software
24 because it was other software we licensed.

25 In 1990 I went to AT&T

1 as we talked about it before?

2 A Yes.

3 Q I'm sorry to play musical
4 agreements with you for a second, but let's
5 go back to the Sequent agreement. It's 275.
6 Do you see that?

7 A Yes.

8 Q 7.06(a) on page 5, the
9 confidentiality provision that we were
10 talking about before, do you see the final
11 sentence of that provision, "If information
12 relating to a software product"?

13 A Yes.

14 Q Would you just take a moment to
15 review that language.

16 (Witness reviewing.)

17 Q Have you had a chance to review
18 that language?

19 A Yes.

20 Q Do you have any independent
21 recollection of the intent of that provision,
22 and by independent recollection, I mean as
23 opposed to just reading the language on the
24 page in front of you?

25 A Well, I recall that it was in many

1 MR. ESKOVITZ: Yes.

2 MR. FELTOON: Okay. So is there a
3 question? We'll accept that that's the
4 different language.

5 Q Do you see any distinctions other
6 than the one I identified?

7 A No, and I don't recall any
8 distinction at the moment.

9 Q Okay. Is it your understanding
10 that the intent with respect to the
11 protections in 2.01 under the Berkeley
12 agreement executed November 1985 were the
13 same as the intent of the protections in 2.01
14 in the 1987 Santa Cruz agreement?

15 MR. FELTOON: You're limiting
16 yourself presumably to 2.01(a) because
17 it has a 2.01(b).

18 MR. ESKOVITZ: We'll limit it to
19 2.01(a) in the education agreement as
20 compared to the 2.01 in the commercial
21 agreement.

22 A And the --

23 Q The question is: Is it your
24 understanding that AT&T intents with respect
25 to the protections of those two provisions

1 was the same?

2 A Yes.

3 Q Okay. You can put those two
4 documents to the side.

5 If you have number 275, the Sequent
6 agreement there -- do you have that
7 agreement?

8 A Yes.

9 Q Let me direct your attention back
10 to paragraph 2.01 in this agreement. My
11 question is: Having reviewed all of the
12 documents that we've discussed today and
13 having engaged in the colloquy that we've
14 discussed today, is it your understanding of
15 AT&T's intent with respect to this agreement
16 that for a derivative or modification to be
17 treated as part of the original software
18 product within the meaning of this Sequent
19 agreement, it had to include literally copied
20 source code?

21 MR. KAO: Objection to form.

22 A Yes.

23 Q And do you view that -- is that
24 your understanding based on your reading of
25 this agreement, the Sequent agreement?

1 Q Right. And that was -- right.

2 And so in order to protect its
3 valuable asset in UNIX, did AT&T feel the
4 need to add to its protections under the
5 license agreements?

6 MR. KAO: Objection to the form.

7 A Well, AT&T set up license
8 agreements to make sure that the software was
9 protected on behalf of AT&T.

10 Q Right. Was it your intent or the
11 intent of anybody at AT&T to reduce AT&T's
12 intellectual property protections through the
13 license agreements?

14 MR. KAO: Objection to the form.

15 A No.

16 Q Is it fair to say that the license
17 agreements were intended to ensure that when
18 AT&T gave licensees this special access to
19 its operating system, that AT&T would receive
20 appropriate protections that went along with
21 that special access?

22 MR. KAO: Objection to the form.

23 A Well, AT&T set up those protections
24 in the agreements.

25 Q And that's what the purpose of the