

EXHIBIT 10

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF
R. DUFF THOMPSON**

Case No. 2:03CV-0294DAK
Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

I, R. Duff Thompson, declare as follows:

1. I submit this declaration in connection with The SCO Group, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003), and The SCO Group v. Novell, Inc., Civil Action No. 2:04CV00139 DAK (D. Utah 2004). I make this declaration based upon personal knowledge.

2. I began my professional legal career as a practicing attorney in 1981 in Salt Lake City, Utah. I began working in the software industry in 1986 when I joined **WordPerfect Corporation** as vice president and general counsel. At the time of the **WordPerfect/Novell** merger in 1994 I accepted a position with Novell as Senior Vice President of Business Development and Strategic Relations. I held that position until early 1996 and then I stayed on in a part time and consulting role to assist Robert Frankenberg with selected issues until 1997.

3. I joined the Caldera International Board of Directors in May of 2001 after Caldera International acquired the two UNIX divisions of Santa Cruz Operations. Caldera International is now known as The SCO Group and I continue to server on the Board of Directors.

Novell's Sale of Its UNIX Business to Santa Cruz

4. In early 1995, Novell Chairman and CEO Robert Frankenberg directed me to sell the complete UNIX business and related assets so the company could focus on its flagship product **NetWare**, cut the related UNIX costs and thereby increase shareholder values for the company. I understood my directive was to sell all of the UNIX business and related assets and that is how I approached the assignment.

5. After receiving this directive from Mr. Frankenberg, we engaged in a selection process, the end result of which was the determination that Santa Cruz Operations was a good candidate to purchase Novell's UNIX business and assets. Thereafter, I formed a transaction

team including myself, Ed Chatlos and other Novell executives and staff, including Ty Mattingly, and we entered into negotiations with Santa Cruz for a potential sale. Lawyers from Wilson, Sonsini, **Goodrich & Rosati** represented Novell in the transaction and lawyers from Brobeck, Phleger & Harrison represented Santa Cruz Operation. During the negotiations in the summer of 1995, I had the responsibility to report back to Mr. Frankenberg regularly on the status of the transaction, which I did. Mr. Chatlos conducted the day to day negotiations with the Santa Cruz team throughout the summer of 1995. I also participated in several of the negotiation sessions meeting with the Santa Cruz CEO and President, **Alok Mohan** and its general counsel, Steve Sabbath and others, including Jim Wilt, Geoff Seabrook, and Kim **Madsen**.

6. Early in the process I informed Mr. Mohan that we were selling the entire UNIX business and all related assets. I wanted that to be very clear to him as we were asking for a substantial sum for the sale. We continued to inform Santa Cruz that it was buying the entire UNIX business and assets, except as explained below.

7. During the course of the negotiations, it became clear that Santa Cruz could not afford to pay the purchase price we were requesting, so various ways were explored to make it possible for Santa **Cruz** to make the purchase. The solution was that Novell would retain an interest in the binary royalty stream from the existing SVRX sub-licenses. It was never suggested or agreed in the negotiation in which I participated that Novell would retain the right to receive additional royalties or fees from licensing of source code or from new sales of SVRX products. Novell did, however, retain certain limited rights to protect that existing SVRX binary royalty stream. The responsibility for the collection of those royalties was placed upon Santa Cruz because after the closing of the sale, they were to own the customer relationships as they

had purchased the entire business and associated assets. Since Novell could report this ongoing binary royalty stream as profit(keeping in mind that this revenue source was simply a mechanism to reduce the **upfront** purchase price for Santa **Cruz**) it made the sale more attractive and more easily justified to the Novell shareholders. To the extent Novell claims it retained rights to waive claims that Santa Cruz or its successors might have regarding breaches of the System V source code agreements, this does not comport with the instructions I received from Robert Frankenberg nor with my recollection of the negotiations or the agreements; and, is certainly contrary to discussions I had with representatives of Santa **Cruz** regarding what Santa **Cruz** was buying and what Novell was retaining. As the Novell executive charged with the sale of the UNIX business and assets, it was never my intent or understanding that Novell was retaining rights to waive breaches of the UNIX System V source code agreements that may have occurred years after Novell sold those UNIX source assets to Santa Cruz.

8. Likewise, it was my understanding and intent, as the Novell executive responsible for the negotiation of the transaction, that the UNIX copyrights were transferred to Santa Cruz as part of the transaction that was closed in December 1995. To that end, I signed on behalf of Novell the Technology License Agreement ("TLA") with Santa Cruz Operations in December 1995 which, among other things, granted Novell the right, with certain limitations set forth therein, to use the technology that we had just sold to Santa **Cruz**. If Novell had retained the UNIX copyrights as it now claims, there **would** have been no need for the TLA; indeed, Novell would have needed to grant Santa **Cruz** a license to the technology.

9. During the course of the negotiations, and in my meetings with representatives of Santa **Cruz**, I never represented that Novell was retaining the copyrights. I did, however, inform

the Santa Cruz team, including Mr. Mohan, that they were getting all of the assets except for (i) the payment back to **Novell** of the binary royalty stream as mentioned above, (ii) any patents, (iii) accounts receivable relating to the binary royalty stream and (iv) some Master License Agreements. Because Santa Cruz was buying the entire UNIX business, including the source code, it was clear that they were getting the copyrights to that source code. We specifically and repeatedly confirmed with Santa Cruz that they were not purchasing any patents, but no such representations were made about the UNIX copyrights because it followed that with the sale of the underlying UNIX source code, they were getting those associated copyrights. To the extent the Excluded Asset Schedule is unclear on the copyright transfer issue, it should be read to conform to the intent and understanding as stated above, i.e., Novell sold the copyrights to Santa Cruz. If that schedule were construed to exclude the UNIX copyrights from the transaction, it would not reflect the intent and understanding of the transaction as agreed to between representatives of Santa Cruz, including Mr. Mohan, and myself, nor does it comport with the instructions I received from Bob Frankenberg upon commencing the negotiations. I have read paragraph 11 of Mr. Chatlos's declaration of October 1, 2004 and I agree with his conclusion there regarding the Excluded Asset schedule. I also agree that Mr. Chatlos's declaration accurately reflects the negotiation and agreements of the parties in the sale of the UNIX business and associated assets to Santa Cruz Operations.

10. I have reviewed paragraphs 41 through 48 of Michael **DeFazio**'s October 3, 2003 declaration and to the extent he states that Novell retained the UNIX copyrights, or that Novell retained the right to receive source code fees or waive, on behalf of Santa Cruz or its successors, breaches of the UNIX System V source code agreements, he is mistaken. Mr. **DeFazio** may have

been involved somewhat in the sale of the UNIX assets in some fashion, but he was not on the lead negotiation team and was not in a position to dictate the intent or understanding of the transaction. Certainly, if Mr. DeFazio really held those views at the time, he never expressed them to me or anyone else of whom I am aware on the Novell transaction team.

11. It is my understanding that in 1996 the parties executed Amendment No. 2 to, among other things, clarify any confusion on the copyright transfer issue, as I have explained above.

12. As noted above, I joined the Caldera International Board of Directors in May of 2001 after Caldera International acquired the two UNIX divisions of Santa Cruz Operations. Caldera International is now known as The SCO Group and I continue to serve on the Board of Directors. During the time that Ransom Love was the CEO of Caldera International and after I joined its Board, there was never any occasion when I heard or was informed that the company had reviewed its UNIX System V source agreements in relation to IBM's initiatives to support and enhance Linux, and that Caldera International had concluded that IBM was not breaching those source agreements or if there was a breach, the company did not care. . . In my view, as a director of Caldera International (later renamed SCO Group) there was never a decision, let alone a conscious decision, to allow IBM or any other party to freely and without restriction license technology protected under the UNIX source code agreements, for the purpose of making contributions to Linux, or for any other purpose.

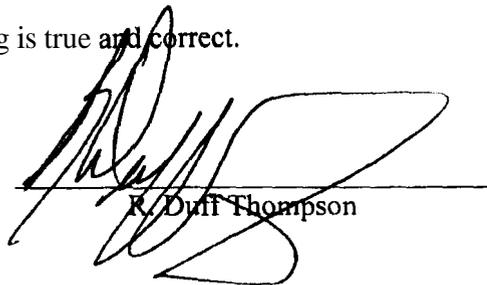
13. I have been made aware of a declaration entered in this matter by Greg Jones, who, at the time of the Novell-Santa Cruz Operations transaction was a staff attorney in the Novell legal department. Although it is possible that someone in the Novell legal department

gave Greg Jones assignments relative to the documentation of the Novell- Santa Cruz transaction, I do not recall him being involved with the APA and related closing documents. .

Greg Jones was not part of the core Novell negotiating team, nor, to the best of my knowledge was he involved in the negotiations with Santa Cruz business negotiators. The firm of Wilson Sonsini Goodrich & Rosati represented Novell in the transaction with Santa Cruz and worked with the Novell legal department in drafting the agreements. The lawyers' direction and assignment was to memorialize the intent and agreement of the parties as directed by Bob Frankenberg and as carried out by by me, Ed Chatlos and our **team**. The inside and outside lawyers for Novell working on the transaction did not have the authority or directive to change material terms of the transaction as intended and agreed by the respective negotiating teams. If any of those lawyers, including Mr. Jones, claim that the APA and related documents mean something other than what is stated in my declaration and the declaration of Ed Chatlos they are wrong. It appears to me that Mr. Jones may be offering his current view or interpretation of the agreements rather than offering any factual testimony **from** personal involvement in the transaction.

I declare under penalty of perjury that the foregoing is true and correct.

November ⁹, 2006



R. Duff Thompson

EXHIBIT 11

Duff Thompson

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC., : Case No. 2:04CV00139
 : :
Plaintiff, : Videotaped Deposition of:
 : :
vs. : R. DUFF THOMPSON
 : :
NOVELL, INC., : :
 : :
Defendant. : :
 : :

February 13, 2007 - 9:13 a.m.

Location: HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101

Reporter: Teri Hansen Cronenwett
Certified Realtime Reporter, Registered Merit Reporter
Notary Public in and for the State of Utah

Esquire Deposition Services
1-800-944-9454

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<p style="text-align: right;">Page 6</p> <p>1 A. I had reviewed this document but in terms of 2 specific provisions, but generally with counsel, with SCO's 3 counsel. 4 Q. (By Mr. Jacobs) So let me ask you about that. You 5 were appointed to the SCO Group's board of directors by 6 Novell after the asset purchase agreement, correct? 7 A. That's correct. 8 Q. And you understood there that you were on the SCO 9 Group's board as a Novell representative? 10 A. Yes. 11 Q. And you reported back to Novell about developments 12 at the SCO Group in accordance with your representative 13 capacity? 14 A. That's correct, for a period of time. 15 Q. And when did that end? 16 A. Well, at the time that Novell sold its stock. 17 Q. And when was that? 18 A. I don't have a clear date in mind. A few years 19 after the transaction, it seems to me. 20 Q. And so immediately or in association with that 21 sale, did you leave the SCO Group's board, or did your 22 capacity change? 23 A. At that point I had -- I was no longer a 24 representative director. I was simply elected as a director 25 and asked to stay on the board by the SCO management.</p>	<p style="text-align: right;">Page 8</p> <p>1 what was your board tenure? How long were you on the board 2 or are you on the board? 3 A. I am currently on the board. 4 Q. And you have been on that board pretty much since 5 the acquisition of Tarantella? 6 A. I think 2001, something like that. 7 Q. When -- 8 MR. SINGER: Object to the form. You said 9 acquisition of Tarantella. I don't know if you meant to say 10 that. 11 A. Oh, sorry. 12 Q. (By Mr. Jacobs) Acquisition of the Unix business 13 from Tarantella, correct? 14 A. Yes. 15 Q. In connection with the acquisition by -- well, 16 strike that. What was your role in the acquisition by 17 Caldera of the Unix business of Tarantella? 18 A. I had no role other than the fact that I was on the 19 board of the selling enterprise. 20 Q. And then were appointed to the board of the 21 acquiring enterprise, correct? 22 A. That's correct. 23 Q. But that occurred after the acquisition closed? 24 A. That's correct. 25 Q. In your capacity as a member of the board of the</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. And just to be clear, we're talking then about the 2 SCO Group before the Caldera acquisition, correct? 3 A. Yes. 4 Q. And then did you stay on the SCO Group's board up 5 until the Caldera acquisition? 6 A. Yes. 7 Q. And then after the Caldera acquisition, did you 8 join the -- did you join the renamed Caldera company; that 9 is, SCO's board? 10 A. Maybe I can help you with some of the names. 11 Q. That would be good. Thank you. 12 A. The old SCO Group actually changed its name to 13 Tarantella, and it will help to help differentiate who was on 14 first. I was a member of the Tarantella board at the time of 15 the sale to Caldera, and in a similar fashion I was appointed 16 to the board of Caldera because of the stockholder interest 17 in Caldera that Tarantella retained. 18 So at that point I was actually a member of two 19 boards, Tarantella board and the Caldera board. Tarantella 20 went through a sale to Sun not long after that, and their 21 board obviously went away. The Caldera group then changed 22 its name to SCO, and so hence the confusion, the -- there was 23 -- there now became a new SCO, which was essentially the 24 transformation of Caldera to SCO. 25 Q. And with respect to Caldera SCO, what has been --</p>	<p style="text-align: right;">Page 9</p> <p>1 selling enterprise, were you involved in any of the diligence 2 that the acquiror did into the status of the Unix assets at 3 Tarantella? 4 A. Any of the due diligence you say that Caldera did? 5 Q. Correct. 6 A. No. The board was not part of the negotiation team 7 in that transaction. 8 Q. When you joined the Caldera board, the company was 9 named Caldera at that point, correct? 10 A. That's right. 11 Q. And the CEO was Ransom Love? 12 A. That's correct. 13 Q. During your tenure on the board, the CEOs switched, 14 and Darl McBride became the CEO? 15 A. That's correct. 16 Q. And you were a member of the board of Caldera that 17 took recommendations from Mr. McBride as to the launching of 18 SCOSource? 19 A. That is correct. 20 Q. And in the course of -- of evaluating those 21 recommendation did you have occasion to review the asset 22 purchase agreement? 23 A. I don't remember reviewing the asset purchase 24 agreement at that time. 25 Q. In evaluating Mr. McBride's recommendations with</p>

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<p style="text-align: right;">Page 22</p> <p>1 recused yourself?</p> <p>2 A. I did, and my recollection is that the -- while I</p> <p>3 was aware that this amendment was in the works, that I was</p> <p>4 not given any information by either party, by either side as</p> <p>5 to how it was being negotiated and who was signing it and all</p> <p>6 those sorts of things.</p> <p>7 Q. So you anticipated my next question, but just to be</p> <p>8 clear, did you provide any input to the Novell side about</p> <p>9 Amendment No. 2 as it related to ownership of the Unix</p> <p>10 copyrights?</p> <p>11 A. I don't remember any instance in which I was either</p> <p>12 asked to give input or that I did give input. Is it</p> <p>13 possible? You have to understand that all of the legal staff</p> <p>14 or many members of the legal staff at Novell were employees</p> <p>15 of mine who I had hired and brought into the company, and so</p> <p>16 I had not -- I hadn't brought them into Novell. I had</p> <p>17 brought them into a previous company which merged with</p> <p>18 Novell. And so I had interaction with these attorneys on a</p> <p>19 fairly regular basis, socially and just in the community.</p> <p>20 And so is it possible I had discussions? Yes. I</p> <p>21 saw Bob Frankenberg on a social basis. Is it possible I had</p> <p>22 discussions? Yes. But I have no recollection that there was</p> <p>23 any specific input that I was asked to give nor that I</p> <p>24 actually gave that resulted in the creation of Amendment 2.</p> <p>25 Q. So just to prod your memory a little bit, you don't</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Not at all. My understanding of the deal starting</p> <p>2 in May and June of 1995 was exactly this, and the document,</p> <p>3 the APA, that I -- that we signed in September of '95 to my</p> <p>4 understanding said this. And to the extent it didn't say</p> <p>5 this, the -- or at least it didn't say it clearly, the</p> <p>6 Amendment No. 2 was a clarification of the ambiguous</p> <p>7 language.</p> <p>8 But you have to read that whole paragraph 8</p> <p>9 together to kind of understand part of the rationale there,</p> <p>10 because not only did we sign the APA, but we signed the</p> <p>11 technology license agreement in December of 1995. And it</p> <p>12 certainly wouldn't have made any sense to me to sign the</p> <p>13 technology licensing agreement in December from SCO to Novell</p> <p>14 if Novell had retained all of that intellectual property.</p> <p>15 That was kind of -- I mean, I didn't -- maybe a way</p> <p>16 to answer your question is, the Amendment 2 was not the</p> <p>17 instructive document on where the copyrights were for me.</p> <p>18 The instructions I received from Bob Frankenberg were the</p> <p>19 instructive charge. What I said to Alok Mohan when I was</p> <p>20 negotiating this transaction were consistent with Bob's</p> <p>21 directions, and the APA -- we intended in the APA to make</p> <p>22 that clear. So I didn't need Amendment 2 to help me</p> <p>23 understand what we had conveyed and what we hadn't conveyed.</p> <p>24 I just make that distinction.</p> <p>25 Q. So just to press that point a bit, do you recall</p>
<p style="text-align: right;">Page 23</p> <p>1 recall something along the lines of, Duff, there is a</p> <p>2 provision in the asset purchase agreement that gives Novell</p> <p>3 ownership of the Unix copyrights. SCO is claiming that needs</p> <p>4 to be clarified. Do you recall why that provision is the way</p> <p>5 it is in the asset purchase agreement?</p> <p>6 A. I don't recall having that discussion with anyone.</p> <p>7 Q. When you prepared this declaration that's in front</p> <p>8 of us dated November 9th, 2006, did you have in mind the fact</p> <p>9 that Amendment No. 2 had a provision relating to ownership of</p> <p>10 the Unix copyrights?</p> <p>11 A. In the general sense.</p> <p>12 Q. So if you take a look at paragraph 8, for example.</p> <p>13 MR. SINGER: Paragraph 8?</p> <p>14 A. Did you say eight?</p> <p>15 Q. (By Mr. Jacobs) Yes. You say there in the first</p> <p>16 sentence: Likewise, it was my understanding and intent, as</p> <p>17 the Novell executive responsible for the negotiation of the</p> <p>18 transaction, that the Unix copyrights were transferred to</p> <p>19 Santa Cruz as part of the transaction that was closed in</p> <p>20 December 1995. You see that?</p> <p>21 A. Yes.</p> <p>22 Q. Now, the Amendment No. 2 was executed in October</p> <p>23 1996. Does Amendment No. 2 and the fact that it has, as you</p> <p>24 said, a clarifying provision relating to Unix copyrights,</p> <p>25 bear on your testimony in that first sentence?</p>	<p style="text-align: right;">Page 25</p> <p>1 specific discussions leading up to the execution of the APA</p> <p>2 in September 1995 about copyright -- and I emphasize</p> <p>3 copyright -- ownership?</p> <p>4 A. I don't recall any specific discussion about</p> <p>5 copyright.</p> <p>6 Q. Do you recall any specific discussions about</p> <p>7 copyright ownership leading up to the execution in December</p> <p>8 1995 of Amendment No. 1?</p> <p>9 A. I mean, the answer is, I -- not only is this now 11</p> <p>10 and a half years in the past, so trying to remember a</p> <p>11 specific discussion about copyright is difficult, but what</p> <p>12 I -- I guess what I can recall is the actual negotiations and</p> <p>13 the tenor of those negotiations and what was said, what we</p> <p>14 said and what they said. And so if you are asking me --</p> <p>15 well, what are you asking me?</p> <p>16 Q. I am asking you -- I think you're answering about</p> <p>17 tenor or overall deal structure, and I am asking you</p> <p>18 specifically about the legal question of copyright ownership.</p> <p>19 A. Yeah, and I guess I would answer that by saying, I</p> <p>20 was instructed to sell the entire Unix business, everything,</p> <p>21 everything. That was the initial instruction, sell</p> <p>22 everything, from Bob Frankenberg to me, and sell UnixWare.</p> <p>23 So sell Unix, sell UnixWare.</p> <p>24 And having practiced law in this area previous to</p> <p>25 joining Novell, so I was a general counsel for another</p>

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 130</p> <p>1 A. Yes.</p> <p>2 Q. Does the fact that the board minutes record that</p> <p>3 Novell will retain all the copyrights have any effect on your</p> <p>4 recollections of the structure of the deal and what was</p> <p>5 understood to be occurring with respect to the Unix</p> <p>6 copyrights?</p> <p>7 A. Yeah, well. What it says is, "Novell will retain</p> <p>8 all of its patents, its copyrights and trademarks." Now, my</p> <p>9 mindset would say, of course it is. It's keeping all of the</p> <p>10 NetWare and NetWare-specific products. Otherwise, everything</p> <p>11 that Bob told me to do and the instructions I received were a</p> <p>12 fraud. So I kind of come at this from the standpoint that,</p> <p>13 when it says Novell is keeping all of its trademarks and</p> <p>14 copyrights and patents, I understand that to mean its, as in</p> <p>15 Novell's, not those that it sold.</p> <p>16 And as backup for that, in reading this boxed</p> <p>17 language, it says, "Novell will retain all of its patents,</p> <p>18 copyrights and trademarks and a royalty-free, perpetual</p> <p>19 worldwide license back to Unix and UnixWare for internal use</p> <p>20 and resale in bundled products." And I guess that seems</p> <p>21 perfectly consistent to me because it says it needed to have</p> <p>22 a license back to be able to use those products because it</p> <p>23 had sold the underlying asset to SCO.</p> <p>24 So it kind of -- even though it's the first time I</p> <p>25 have seen this, as I read it, I think to myself, I'm not</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. And a bundle of rights you believed included --</p> <p>2 looking back on it, you believed the structure of the deal</p> <p>3 meant that the bundle of rights included the copyrights?</p> <p>4 A. No. At the time I believe it included the bundle</p> <p>5 of the copyrights, at the time.</p> <p>6 Q. Well, I'm a little confused because I thought you</p> <p>7 said this morning that you don't recall any specific</p> <p>8 discussion about copyrights.</p> <p>9 A. Yeah, but that doesn't mean that that's not what I</p> <p>10 understood we were doing at the time.</p> <p>11 Q. So you --</p> <p>12 A. So the fact that I may not have had a specific</p> <p>13 discussion that I can recall 11 and a half years later should</p> <p>14 not be taken to mean I don't recall what our intention was in</p> <p>15 selling the business. It is impossible for me to parse in my</p> <p>16 mind the assignment that we received to sell the -- to sell</p> <p>17 the entire business, all of Unix and UnixWare to SCO, and to</p> <p>18 somehow also in that same breath say, except the copyrights.</p> <p>19 I just -- I don't understand that kind of thinking,</p> <p>20 and certainly I just have to tell you that that kind of trick</p> <p>21 play was not something that Bob Frankenberg would have</p> <p>22 directed, nor is it something he would have stood for. It's</p> <p>23 not something I would have done.</p> <p>24 If we had intended not to transfer the copyrights,</p> <p>25 we would have been very careful to say, you don't get the</p>
<p style="text-align: right;">Page 131</p> <p>1 sure -- I'm not sure that even today, if you were to ask the</p> <p>2 members of the board who were there, if they understood that</p> <p>3 to known Novell was retaining all the Unix copyrights because</p> <p>4 it says in the next sentence, they're getting back a</p> <p>5 royalty-free perpetual worldwide license back to Unix and</p> <p>6 UnixWare for internal use.</p> <p>7 So my own reading of this is that this is perfectly</p> <p>8 consistent with what I understood we did and what we were</p> <p>9 signing the next day in the September 19th APA.</p> <p>10 Q. Now, it does say, except for the trademarks Unix</p> <p>11 and UnixWare, doesn't it?</p> <p>12 A. Right.</p> <p>13 Q. So it does get pretty granular about something</p> <p>14 associated with Unix when it talks about trademarks?</p> <p>15 A. Trademarks, right.</p> <p>16 Q. But it doesn't have similar degree of granularity</p> <p>17 when it's discussing copyrights?</p> <p>18 A. No. But the license back to Unix and UnixWare in</p> <p>19 the next line, it seems to me, is relatively granular.</p> <p>20 Q. So let's talk -- let's get granular about that,</p> <p>21 then. The -- you understood that there were a bundle of</p> <p>22 assets associated with Unix and UnixWare that were being</p> <p>23 transferred to SCO?</p> <p>24 A. That's right, that this was a business that</p> <p>25 included a bundle of rights. That's right.</p>	<p style="text-align: right;">Page 133</p> <p>1 copyrights. And it wouldn't have been an oblique reference.</p> <p>2 It would have been, you get all the business except the</p> <p>3 copyrights. Not, you get all the business.</p> <p>4 Q. You know there are a lot of arguments on both sides</p> <p>5 of this issue, and I don't want to get into a debate with you</p> <p>6 that you and I can't resolve. But if -- but does your</p> <p>7 testimony on this point turn on your view that this is all a</p> <p>8 trick if Novell in fact retained the copyrights? If it were</p> <p>9 demonstrated to you that it was not a trick, for example,</p> <p>10 would that change your view?</p> <p>11 MR. SINGER: Object to the form of the question.</p> <p>12 Q. (By Mr. Jacobs) I'm trying to --</p> <p>13 A. I think --</p> <p>14 Q. -- let me be a little clearer. What exactly -- as</p> <p>15 you sit here today, what exactly are you calling upon in your</p> <p>16 memory to testify that you understood it was Novell's intent</p> <p>17 to transfer the copyrights?</p> <p>18 A. My conversations with my staff, Ed Chatlos in</p> <p>19 particular. Ty Mattingly was in some of those meetings. My</p> <p>20 conversations with Alok Mohan, Jeffrey Seabrook, I think was</p> <p>21 his name, Steve Sabbath, in which I said, "We are selling our</p> <p>22 Unix business, lock, stock and barrel, all of it." That's</p> <p>23 how it started.</p> <p>24 Q. Exactly. That's how it started, isn't it?</p> <p>25 A. Yes. We are selling everything.</p>

34 (Pages 130 to 133)

EXHIBIT 12

I, ED CHATLOS, declare as follows:

1. I submit this Declaration in connection with the lawsuits entitled *The SCO Group v. Novell, Inc.* and *The SCO Group v. International Business Machines Corporation*.

I. WORK HISTORY

2. Following my graduation from college, in 1980, I went to work for Western Electric, an AT&T subsidiary. After taking time off to obtain a Master's Degree in Computer Science in 1981, I resumed working that year at Western Electric on product management. In approximately 1984, I joined the Computer System Division of AT&T, the UNIX group working on international business development. I worked in that division through 1986.
3. In February 1987, I transferred to London and worked on licensing UNIX to European users. In 1988, I became Acting International Managing Director in Europe. In 1989, I transferred back to the United States and began working on business planning and development on UNIX issues. The UNIX business was

transferred to UNIX Systems Laboratories, Inc. ("USL") by 1991, and I continued working on strategic business issues for UNIX.

4. After Novell, Inc. ("Novell") purchased USL in 1993, I went to work for Novell on UNIX Strategic Partnerships and Business Development issues within the Strategic Relations and Mergers and Acquisitions organization. My title at Novell was Senior Director. I voluntarily left Novell in early 1996.

II. NOVELL'S SALE OF UNIX TO THE SANTA CRUZ OPERATION, INC. ("SCO")

5. In 1995, I learned that Bob Frankenberg, Novell's Chief Executive Officer, had determined that Novell should explore selling the entire UNIX business which Novell had purchased from USL. Under the direction of Duff Thompson, Senior Vice President of Corporate Development, and Mike DeFazio, Executive Vice President of the UNIX System Group, Novell considered several potential purchasers. Novell thereafter began serious discussions with SCO.
6. I was assigned the responsibility of negotiating and completing the deal to sell UNIX and its business to SCO. In or about June 1995, I became the lead negotiator for

Novell in the negotiations with SCO and headed the day-to-day responsibility for the potential deal. I was the principal interface with SCO on the business negotiations for Novell.

7. During these negotiations, I met regularly with SCO representatives, sometimes several times a week from June to September 1995. Early in our discussions, it became apparent that SCO could not pay the full purchase price as contemplated by Novell. To bridge the price gap, it was ultimately agreed that Novell would retain certain binary royalty payments under UNIX licenses. It was my understanding – and intent, on behalf of Novell – that the complete UNIX business would be transferred to SCO. I am not aware of any instance in which anyone at Novell or SCO ever stated or exhibited any contrary intent or understanding, to me or anyone else.
8. SCO and Novell thereafter negotiated the Asset Purchase Agreement (“APA”) dated September 19, 1995. Under the APA, Novell received shares of SCO common stock and other consideration, and retained rights to certain binary product royalty

payments. SCO acquired all right, title, and interest in and to the UNIX and UnixWare business, operating system, and source code. In the transaction, it was my intent – and to my understanding was Novell’s intent – to sell the entire UNIX business to SCO, including the UNIX source code and all associated copyrights.

9. The above-described proposal was for Novell to transfer the entire UNIX business to SCO except for certain binary product royalties that would be remitted to Novell. It was always my understanding and intent, on behalf of Novell, that the UNIX source code and its copyrights were part of the assets SCO purchased. I do not recall anyone else ever suggesting that Novell would retain any copyright relating to UNIX, nor was I present for any discussions, general or specific, during the negotiations that contradicted my understanding of the transaction described herein. None of my superiors at Novell ever informed me that Novell was not transferring the UNIX copyrights to SCO. Likewise, I never communicated to SCO in any way that the UNIX copyrights were not being sold to SCO. Nor am I aware of any instance in

which anyone from Novell ever informed SCO in any way that the UNIX copyrights were not being sold to SCO as part of this transaction.

10. Given my central role in the negotiations, I believe I would have known if the parties had agreed that Novell would retain any UNIX copyrights. My intent and understanding as the lead negotiator for Novell was that Novell was transferring the copyrights to SCO in the APA. At the time the transaction was signed and closed, I did not observe anyone at Novell or SCO stating or acting as if Novell had retained any UNIX copyrights. If they had, it would have been contrary to the intent and structure of the deal as I understood it and communicated with SCO. In fact, from the time the APA transaction closed in 1995 until this day, it has been my understanding and belief that Novell sold the UNIX copyrights to SCO as of the time of the closing in 1995.

11. I have reviewed Schedule 1.1(b), Excluded Assets of the APA (the “Excluded Assets Schedule”) with attention to the question of whether Novell was to retain any UNIX copyrights. In my opinion the word “copyrights” in Paragraph V.A. refers – and was

intended by the parties to refer – to Novell copyrights other than those relating to UNIX and UnixWare, including the NetWare assets specifically referenced in Paragraphs I, II, and IV of the Excluded Assets Schedule.

12. Pursuant to a Technology Licensing Agreement signed by the parties in early December 1995, Novell licensed from SCO the use of the UNIX source code. I believe this licensing arrangement was consistent with SCO's ownership of the copyrights upon the closing of the APA.

13. Paragraph 4.16 of the APA was specifically designed and intended to protect Novell's retained binary product royalty stream. Based on the foregoing, including my understanding of the parties' intent, I do not believe Novell has any right to waive, or to direct or require SCO to waive, any of SCO's source code rights, including under customer source code licenses.

14. I declare under penalty of perjury that the foregoing is true and correct.

Executed: 10/1/04
New York, New York


Ed Chatlos

EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

-----x

THE SCO GROUP, INC.

Plaintiff/Counterclaim Defendant

vs.

CASE NO. 2:04CV00139

NOVELL, INC.

Defendants/Counterclaim-Plaintiff.

-----x

DEPOSITION OF EDWARD CHATLOS

March 22, 2007

JOB NO: 192711

REPORTED BY:

Danielle Grant

ESQUIRE DEPOSITION SERVICES
212-687-8010

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<p>1 Chatlos</p> <p>2 understanding after the execution of the APA as</p> <p>3 to whether Novell had the right to direct Santa</p> <p>4 Cruz to modify its SVRX licenses as defined or</p> <p>5 referenced in the APA?</p> <p>6 A Yes, Novell had the right to modify</p> <p>7 the terms of the binary royalties -- binary</p> <p>8 royalties or the schedules associated with them.</p> <p>9 And we did that to protect their -- the revenues</p> <p>10 stream, the rights and their flexibility on that</p> <p>11 revenue stream.</p> <p>12 Q When you say protect the flexibility</p> <p>13 on that revenue stream, what do you mean?</p> <p>14 A In some cases we contemplated an</p> <p>15 acceleration of binary payments or a buyout.</p> <p>16 Q I'm handing you, Mr. Chatlos, what's</p> <p>17 marked as Exhibit 1065. Exhibit 1065 is a</p> <p>18 declaration, Mr. Chatlos, that you signed on</p> <p>19 October 1st, 2004. Do you recognize the</p> <p>20 document?</p> <p>21 A Yes.</p> <p>22 Q Now, you had occasion to give</p> <p>23 deposition testimony in the SCO versus IBM case;</p> <p>24 is that correct?</p> <p>25 A Yes.</p>	<p>1 Chatlos</p> <p>2 reflects the intent.</p> <p>3 Q Let me ask you about some of the</p> <p>4 particular language in the declaration looking at</p> <p>5 Paragraph 7 on Page 3. You said beginning the</p> <p>6 second sentence, "Early in your discussions it</p> <p>7 become apparent that SCO could not pay the full</p> <p>8 purchase price as contemplated by Novell to</p> <p>9 bridge the price gap. It was ultimately agreed</p> <p>10 that Novell would retain certain binary royalty</p> <p>11 payments under UNIX licenses.</p> <p>12 "It was my understanding and</p> <p>13 intent on behalf of Novell that the complete</p> <p>14 UNIX business would be transferred to SCO, I am</p> <p>15 not aware of any instance in which anyone at</p> <p>16 Novell or SCO ever stated or exhibited any</p> <p>17 contrary intent or understanding to me or</p> <p>18 anyone else." Do you see that language?</p> <p>19 A Yes.</p> <p>20 Q How does that language comport with</p> <p>21 your understanding of the issue of the price gap</p> <p>22 that you addressed in the paragraph?</p> <p>23 A It reflects the resolution we've</p> <p>24 come up with to bridge that gap.</p> <p>25 Q Did you have occasion to deal with</p>
Page 35	Page 37
<p>1 Chatlos</p> <p>2 Q And you discussed in that deposition</p> <p>3 the contents of this declaration; is that right?</p> <p>4 A Yes.</p> <p>5 Q And I don't want to walk you back</p> <p>6 through all of that, but I wanted to ask if you</p> <p>7 could generally explain the process by which you</p> <p>8 came to execute this declaration, if you can</p> <p>9 recall it?</p> <p>10 A Yeah, there were several discussions</p> <p>11 with a number of the SCO representatives in which</p> <p>12 I talked about the intent of the agreement and</p> <p>13 ultimately what is reflected in here.</p> <p>14 Q Have you had occasion to review</p> <p>15 Exhibit 1065 recently?</p> <p>16 A I don't think I looked at this since</p> <p>17 the deposition.</p> <p>18 Q As you sit here is there any</p> <p>19 amendment or clarification you would like to make</p> <p>20 to this Exhibit?</p> <p>21 A Without reading it --</p> <p>22 MR. SOLECKI: You can read it.</p> <p>23 Q Feel free to take a couple of</p> <p>24 minutes to read it if you would like to.</p> <p>25 A I don't want to modify this, this</p>	<p>1 Chatlos</p> <p>2 any outside counsel in the fall of 1995 regarding</p> <p>3 the negotiation of the APA?</p> <p>4 A Yes, I can't remember specific</p> <p>5 instances, but I remember discussing or meeting</p> <p>6 with both sides outside counsel.</p> <p>7 Q And can you recall the individuals</p> <p>8 with whom you dealt with?</p> <p>9 A I don't remember the names of the</p> <p>10 SCO counsels, I remember Wilson Sonsini was the</p> <p>11 counsel for Novell.</p> <p>12 Q You say in Paragraph 8 of your first</p> <p>13 declaration in the last sentence, "In the</p> <p>14 transaction it was my intent and to my</p> <p>15 understanding was Novell's intent to sell the</p> <p>16 entire UNIX business to SCO including the UNIX</p> <p>17 source code and all associated copyrights." Do</p> <p>18 you see that language?</p> <p>19 A Yes.</p> <p>20 Q Does that statement accurately</p> <p>21 reflect your intent?</p> <p>22 A Yes, it was to get -- to sell SCO</p> <p>23 the entire business, so that they could conduct</p> <p>24 the business in a complete manner on their side.</p> <p>25 Q You say Paragraph 9 beginning in the</p>

10 (Pages 34 to 37)

Page 38	Page 40
<p>1 Chatlos</p> <p>2 third sentence, "I do not recall anyone else ever</p> <p>3 suggesting that Novell would retain any copyright</p> <p>4 relating to UNIX, nor was I present for any</p> <p>5 discussions general or specific during the</p> <p>6 negotiations that contradicted my understanding</p> <p>7 of the transaction described herein. None of my</p> <p>8 superiors at Novell ever informed me that Novell</p> <p>9 was not transferring the UNIX copyrights to SCO.</p> <p>10 Likewise, I never communicated to SCO in any way</p> <p>11 that the UNIX copyrights were not being sold to</p> <p>12 SCO, nor am I aware of any instance in which</p> <p>13 anyone from Novell ever informed SCO in any way</p> <p>14 that the UNIX copyrights were not being sold to</p> <p>15 SCO as part of this transaction."</p> <p>16 Does that language accurately</p> <p>17 reflect your recollection and intent regarding</p> <p>18 the issue of copyrights?</p> <p>19 A Very much reflects it. It's intended</p> <p>20 to sell the entire business, including the</p> <p>21 copyrights. And there were no discussions to</p> <p>22 counter that.</p> <p>23 Q Did anyone ever suggest to you that</p> <p>24 Novell did not intend to sell the UNIX and</p> <p>25 UnixWare copyrights to SCO?</p>	<p>1 Chatlos</p> <p>2 portion of the assets, I potentially would have</p> <p>3 fundamentally changed the deal and changed the</p> <p>4 intent.</p> <p>5 Q I want to ask you, Mr. Chatlos,</p> <p>6 about Paragraph 11 of your declaration which</p> <p>7 references the APA, so I thought we could first</p> <p>8 turn to schedule 1.1B of the APA, and that is</p> <p>9 beginning on the page ending 954?</p> <p>10 A Yes, I see that.</p> <p>11 Q And it goes over to 955?</p> <p>12 A Yes.</p> <p>13 Q You say in your declaration in</p> <p>14 Paragraph 11, "I have reviewed schedule 1.1B,</p> <p>15 excluded assets of the APA, the excluded asset</p> <p>16 schedule, with attention to the question of</p> <p>17 whether Novell was to retain any UNIX copyrights.</p> <p>18 In my opinion, the word copyrights in Paragraph</p> <p>19 5A refers and was intended by the parties to</p> <p>20 refer to Novell copyrights other than those</p> <p>21 related to UNIX and UnixWare, including the</p> <p>22 Netware assets referenced in Paragraph 1, two and</p> <p>23 4 of the excluded assets scheduled." Do you see</p> <p>24 that language?</p> <p>25 A Yes.</p>
Page 39	Page 41
<p>1 Chatlos</p> <p>2 A No, not when we were -- not at this</p> <p>3 time.</p> <p>4 Q You say in Paragraph 10 in the</p> <p>5 beginning, "Given my central role in the</p> <p>6 negotiations, I believe I would have known if the</p> <p>7 party's had agreed that Novell would retain any</p> <p>8 UNIX copyrights. My intent and understanding as</p> <p>9 the lead negotiator for Novell was that Novell</p> <p>10 was transferring the copyrights to SCO and the</p> <p>11 APA. At the time the transaction was signed and</p> <p>12 closed, I did not observe anyone at Novell or SCO</p> <p>13 stating or acting as if Novell had retained any</p> <p>14 UNIX copyrights." Do you see that language?</p> <p>15 A Yes.</p> <p>16 Q Does that language accurately</p> <p>17 reflect your intent and understanding on the</p> <p>18 issue of copyrights?</p> <p>19 A Yes, it does.</p> <p>20 Q Why do you believe that you would</p> <p>21 have known if the party's had agreed that Novell</p> <p>22 would have retained any UNIX copyrights?</p> <p>23 A As the lead negotiator I was forming</p> <p>24 a business arrangement between SCO and Novell.</p> <p>25 And if they wanted to take out a significant</p>	<p>1 Chatlos</p> <p>2 Q Does that language accurately</p> <p>3 reflect your views of schedule 1.1B on the issue</p> <p>4 of UNIX and UnixWare copyrights?</p> <p>5 A Yeah, 1.1B refers to those items in</p> <p>6 that Novell was retaining and addressing all</p> <p>7 those items it was retaining, not those that were</p> <p>8 being transferred to SCO.</p> <p>9 Q Now, do you know whether this</p> <p>10 excluded asset schedule was the subject of a</p> <p>11 subsequent amendment?</p> <p>12 A I believe it was amended.</p> <p>13 Q Have you heard of Amendment No. 2 to</p> <p>14 the APA?</p> <p>15 A Yes, I wasn't party of that.</p> <p>16 Q You left Novell by the time it was</p> <p>17 negotiated; is that right?</p> <p>18 A Correct, um-hum.</p> <p>19 Q I'm handing you, Mr. Chatlos, what's</p> <p>20 been previously marked as Exhibit 1009, which is</p> <p>21 a copy of Amendment No. 2. We seem to be short</p> <p>22 of copies, but you've probably heard of it. Do</p> <p>23 we have one other that I can use?</p> <p>24 MR. SOLECKI: I can give you this</p> <p>25 back if you need it.</p>

11 (Pages 38 to 41)

EXHIBIT 14

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,)	
)	
Plaintiff/	)	2:04CV00139
Counterclaim-Defendant,)	
)	
vs.)	
)	
NOVELL, INC.,)	
)	
Defendant/)	
Counterclaim-Plaintiff.)	
-----*)	

Friday, March 23, 2007
Elizabeth, New Jersey
10:01 a.m.

Videotaped Deposition of BURT LEVINE,
taken by Defendant/Counterclaim-Plaintiff, pursuant
to Notice, held at the Sheraton Four Points Hotel,
901 Spring Street, Elizabeth, New Jersey, on Friday,
March 23, 2007 at 10:01 a.m. before Josephine H.
Fassett, a Certified Shorthand Reporter and Notary
Public of the State of New York.

SHARI MOSS & ASSOCIATES
Certified Shorthand Reporters
877 Cowan Road, Suite A
Burlingame, California 94010
(415) 402-0004

<p style="text-align: right;">Page 14</p> <p>1 don't know if we got the ownership from AT&T, I 2 think we got the rights to use it in the business 3 when we went over. But whether there were any 4 actual patents that USL was the owner of, I don't 5 have a recollection of that. 6 Q They could have been but you're just 7 not sure? 8 A That's correct. 9 Q Do you know if USL had any 10 copyrights while you were working for USL relating 11 to UNIX? 12 MR. NORMAND: Objection to form. 13 A Again I believe they did, I believe 14 they did. 15 Q And do you know if the copyright 16 registrations for those copyrights or the original 17 certificates for those copyrights were maintained 18 in New Jersey where you were? 19 A I don't. I believe that the 20 copyrights may have still have been in New York at 21 that time. 22 Q At some point in time while you were 23 at USL would you have gotten the copyright 24 registrations and original copyright certificates 25 in the New Jersey office for USL?</p>	<p style="text-align: right;">Page 16</p> <p>1 to work for Novell after Novell purchased USL and 2 its UNIX assets? 3 A Yes. 4 Q Okay. Which other lawyers for USL 5 went to Novell? 6 A One of them was Ted Weitz. And the 7 other was Sandy Tannenbaum who in the interim from 8 the time that USL was formed and the time that the 9 Novell deal with USL was, he took Snedeker's place 10 I believe and he was made a, a director or a vice 11 president, I forget which. 12 Q After the purchase of USL and its 13 assets by Novell in 1993, did you stay in your New 14 Jersey office of USL? 15 A Yes. 16 Q And I take it Mr. Weitz and 17 Mr. Tannenbaum, the other two USL lawyers, stayed 18 in the New Jersey offices of USL after the Novell 19 purchase of USL? 20 A Yes, they did. 21 Q Did the UNIX business itself that 22 was USL also stay in New Jersey after the Novell 23 purchase of USL? 24 A Primarily, yes. 25 Q And when you say "primarily," I take</p>
<p style="text-align: right;">Page 15</p> <p>1 A I can't answer that, I don't know. 2 Q You don't remember? 3 A I don't remember. 4 Q It's possible that the copyright 5 registrations and original copyright certificates 6 could have been in New Jersey when you were with 7 USL? 8 MR. NORMAND: Objection to form. 9 A It's possible, more likely they were 10 in New York. 11 Q Now do you recall that I believe in 12 1993 USL and its UNIX assets were purchased by 13 Novell? 14 A Yes. 15 Q Do you recall what the purchase 16 price was? 17 A I don't. 18 Q When Novell purchased USL and its 19 UNIX assets in 1993, did you move to Novell? 20 A Yes. 21 Q And when I say "moved to Novell," I 22 meant you went to work for Novell in 1993; is that 23 right? 24 A That's correct. 25 Q Did any other lawyers for USL begin</p>	<p style="text-align: right;">Page 17</p> <p>1 it that perhaps some other part of the business 2 might have been elsewhere; is that correct? 3 A Yeah. As I understood it, the 4 Novell product NetWare and various appendages of 5 that stayed in Utah whereas the UNIX part stayed 6 primarily in New Jersey. There may have been 7 salespeople, marketing people of UNIX out in Utah. 8 Again, my memory isn't great on that one. 9 Q But the UNIX business primarily was 10 back in New Jersey with you; is that right? 11 A Yes. 12 Q Is it fair to say that the legal 13 team working on the UNIX business was also back 14 with you in New Jersey after the Novell purchase 15 of USL? 16 A Do you mean Weitz and -- yeah, there 17 were three of us as I recall, Weitz, myself and 18 Tannenbaum. 19 Q Now you mentioned that there might 20 have been some salespeople or marketing people for 21 UNIX who were out in Utah; is that right? 22 A No, I was just guessing that. You 23 wanted to know where the division was and I said 24 if there were people for UNIX out there, it 25 probably would have been salespeople.</p>

5 (Pages 14 to 17)

Page 18

1 Q You're not sure if there were any --
 2 sorry.
 3 A No, I'm not sure.
 4 Q You're not sure if there were any
 5 UNIX business persons who were operating out in
 6 Utah where Novell's business was headquartered?
 7 A No, I'm not sure now.
 8 Q Did you have an understanding that
 9 prior to Novell's purchase of USL in 1993 that
 10 Novell was headquartered in Utah?
 11 A I believe so.
 12 Q Did you have any understanding as to
 13 whether there was an existing Novell Legal
 14 Department at the time of the USL purchase by
 15 Novell?
 16 A I don't know if it was before or
 17 after the merger that I found that out, I had
 18 assumed that there was.
 19 Q After the purchase of USL by Novell,
 20 did you come to an understanding that there were
 21 other lawyers for Novell who were working out in
 22 Utah?
 23 A You mean after, after we were all
 24 Novell?
 25 Q Yes.

Page 19

1 A Yes.
 2 Q Do you know how many lawyers were
 3 working for Novell in Utah?
 4 A No. No. At least four, maybe more.
 5 Q Is it fair to say that you and
 6 Mr. Weitz and Mr. Tannenbaum in New Jersey were
 7 continuing to head up the legal efforts relating
 8 to UNIX after Novell's purchase of USL in 1993?
 9 A That was my understanding.
 10 Q After the purchase of USL and its
 11 UNIX assets by Novell in 1993, did you and the
 12 rest of the USL Legal Department back in New
 13 Jersey continue to maintain legal files for the
 14 UNIX business that was part of USL?
 15 A Well, we worked with the same group
 16 in Greensboro and they would have maintained those
 17 files, I don't think there was any change
 18 physically in that aspect of it when these various
 19 transactions took place.
 20 Q To the extent that there were any
 21 patents or copyright registrations or original USL
 22 copyright certificates relating to UNIX, would
 23 those documents have been maintained by you and
 24 the rest of the USL Legal Department back in New
 25 Jersey after the Novell acquisition?

Page 20

1 A No, we still didn't maintain those
 2 ourselves. I think there was a separate
 3 department in AT&T that maintained these. Again,
 4 this is assuming that these were the original UNIX
 5 registrations that came over from one entity to
 6 another.
 7 Q To the best of your understanding,
 8 is it the case that to the extent there was any
 9 copyright registration, copyright certificate or
 10 patents for AT&T or USL at the time of the Novell
 11 purchase of USL, those legal documents would have
 12 been maintained in the New York office of AT&T?
 13 A I think by that point being that we
 14 were spun off they would have been maintained with
 15 us.
 16 Q To the extent any of those
 17 documents, patents, copyright registrations or
 18 original copyright certificates existed when you
 19 were at USL, those documents would have been back
 20 in New Jersey with USL; is that right?
 21 A If they originated after say 1991
 22 when the USL transaction took place, I would say
 23 so.
 24 Q And if they had originated with AT&T
 25 they would have been maintained with AT&T; is that

Page 21

1 right?
 2 A I believe so.
 3 Q Do you recall after moving from USL
 4 to Novell ever sending anything like copyright
 5 certificates or copyright registrations or patents
 6 to Novell --
 7 A I --
 8 Q -- in Utah?
 9 A I don't remember that.
 10 Q To the best of your belief those
 11 would have been maintained in New Jersey and not
 12 sent to Utah?
 13 A I could only speculate on that, I
 14 don't know.
 15 Q Based on your understanding as to
 16 how the legal department operated for USL, is it a
 17 fair statement that those likely remained in New
 18 Jersey?
 19 A I would say it's a strong
 20 possibility, again, I have, you know, no
 21 information one way or the other.
 22 Q Do you have an understanding that in
 23 1995 Novell then sold certain UNIX assets to a
 24 company called the Santa Cruz Operation?
 25 MR. NORMAND: Objection to form.

Page 22	Page 24
<p>1 A I did.</p> <p>2 Q After the purchase by Santa Cruz of</p> <p>3 certain UNIX assets from Novell, did you initially</p> <p>4 continue to work with Novell back in New Jersey?</p> <p>5 MR. NORMAND: Objection to form.</p> <p>6 A Excuse me, what date are we, what</p> <p>7 time frame are we talking now?</p> <p>8 Q 1995.</p> <p>9 A After the --</p> <p>10 Q Original. Let me just -- I'll</p> <p>11 clarify it with a date.</p> <p>12 A Okay.</p> <p>13 Q Do you have an understanding that on</p> <p>14 September 19th, 1995 Novell sold certain UNIX</p> <p>15 assets to a company called Santa Cruz?</p> <p>16 MR. NORMAND: Objection to form.</p> <p>17 A Yes.</p> <p>18 Q Immediately after that purchase on</p> <p>19 September 19, 1995 did you continue to work with</p> <p>20 Novell back in New Jersey?</p> <p>21 A As I recall I did. In the same</p> <p>22 facility --</p> <p>23 Q Right.</p> <p>24 A -- I remember I did.</p> <p>25 Q Were you still in Summit, New Jersey</p>	<p>1 continue to work for Santa Cruz in New Jersey?</p> <p>2 A Weitz did. I think sometime in 1996</p> <p>3 Tannenbaum left the company and I think went back</p> <p>4 to AT&T.</p> <p>5 Q When you say Mr. Tannenbaum left the</p> <p>6 company, you meant he left Novell?</p> <p>7 A He left SCO.</p> <p>8 Q Oh, okay. So Mr. Tannenbaum went to</p> <p>9 Santa Cruz and then went back to AT&T?</p> <p>10 A I think that was the sequence of it,</p> <p>11 yeah.</p> <p>12 Q Now you said that you, after the</p> <p>13 purchase by Santa Cruz you went -- you stayed in</p> <p>14 New Jersey, right?</p> <p>15 A Yes.</p> <p>16 Q Okay. Did the rest of the USL</p> <p>17 business that was part of Novell in New Jersey</p> <p>18 also continue to reside in New Jersey?</p> <p>19 A There was a big development group</p> <p>20 that was doing the UNIX software development and I</p> <p>21 believe most, if not all of them went over to SCO.</p> <p>22 Q And they stayed in New Jersey?</p> <p>23 A And they stayed in New Jersey.</p> <p>24 Q After you went to work for -- after</p> <p>25 you went from Novell to Santa Cruz, did you keep</p>
Page 23	Page 25
<p>1 at that point in time?</p> <p>2 A I believe we were, yeah.</p> <p>3 Q A few months or so after the</p> <p>4 purchase by Santa Cruz of certain UNIX assets from</p> <p>5 Novell did you then move to Santa Cruz, meaning</p> <p>6 you began to work for Santa Cruz?</p> <p>7 A Yes.</p> <p>8 Q Do you remember approximately when</p> <p>9 that happened?</p> <p>10 A It was a transition time and by</p> <p>11 February 1st of 2006 I know that the three of us</p> <p>12 in the Legal Department were considered SCO</p> <p>13 employees, whether there was anything that was</p> <p>14 formalized on company records before that, I don't</p> <p>15 know.</p> <p>16 Q Okay. I think you said 2006, you</p> <p>17 meant February 1st, 1996, right?</p> <p>18 A Yeah.</p> <p>19 Q Just so the record is clear.</p> <p>20 A How time flies. Yeah.</p> <p>21 Q When you did transition to Santa</p> <p>22 Cruz in approximately February of 1996, did you</p> <p>23 continue to work in New Jersey?</p> <p>24 A Yes.</p> <p>25 Q Did Mr. Tannenbaum and Mr. Weitz</p>	<p>1 your various UNIX business files with you?</p> <p>2 A Yeah, whatever we had we kept.</p> <p>3 Q And would you and the rest of the</p> <p>4 USL Legal Department that was part of Novell have</p> <p>5 kept any files that they had including files such</p> <p>6 as copyright registrations, copyright certificates</p> <p>7 or patents that USL had been maintaining as part</p> <p>8 of Novell?</p> <p>9 A Yeah, yeah, I think we would have</p> <p>10 kept them in the same place if we had them.</p> <p>11 Q Now, Mr. Levine, you're a lawyer by</p> <p>12 training; is that right?</p> <p>13 A Yes.</p> <p>14 Q Okay. How long did you practice as</p> <p>15 a lawyer or are you still practicing as a lawyer?</p> <p>16 A Well, I'm still a member of the New</p> <p>17 Jersey bar, but the last time I did any legal work</p> <p>18 really was the middle of 2002.</p> <p>19 Q Are you retired?</p> <p>20 A Semi.</p> <p>21 Q When did you graduate from law</p> <p>22 school?</p> <p>23 A 1962.</p> <p>24 Q Where did you graduate from law</p> <p>25 school?</p>

7 (Pages 22 to 25)

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1 that right?
 2 A Eight Roman numerals, yes.
 3 Q Right. And those are assets of
 4 substance; isn't that right?
 5 MR. NORMAND: Objection to form.
 6 A Intellectual property, yes,
 7 definitely.
 8 Q Okay. And if you look at Roman V it
 9 is entitled Intellectual Property, correct?
 10 A Right.
 11 Q And it lists two types of excluded
 12 intellectual property, one, all copyrights and
 13 trademarks except for the trademarks UNIX and
 14 UnixWare, and two, all patents; do you see that?
 15 A I see that.
 16 Q Okay. What is listed is (a) and (b)
 17 of Roman V are specifically excluded assets under
 18 this contract, would you agree with me?
 19 A Specifically listed assets, yes.
 20 Q Specifically listed as excluded --
 21 A Right.
 22 Q -- assets, correct?
 23 MR. NORMAND: Objection to form.
 24 BY MR. BRAKEBILL:
 25 Q In reading this do you understand

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1 that Novell is excluding all patents from this
 2 asset transfer?
 3 A I understand what the agreement
 4 says, I understand what the exclusions are in the
 5 document.
 6 Q Okay. And based on reading this
 7 exclusion in the contract do you understand that
 8 all copyrights and trademarks except for the
 9 trademarks UNIX and UnixWare are excluded from
 10 this asset transfer?
 11 A No, I don't.
 12 MR. NORMAND: Objection to form.
 13 Objection to the extent it calls for a
 14 legal conclusion.
 15 BY MR. BRAKEBILL:
 16 Q You disagree with the language in
 17 this schedule; is that right?
 18 MR. NORMAND: Objection to form.
 19 A No, I don't disagree that these are
 20 listed here, I disagree that in the context of
 21 this agreement that this is, that this is the
 22 whole story.
 23 Q Do you disagree that the contract on
 24 September 19th, 1995 specifically excluded all
 25 copyrights and trademarks except for the

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1 trademarks UNIX and UnixWare?
 2 MR. NORMAND: Objection to form.
 3 Objection to the extent it calls for a
 4 legal conclusion.
 5 A I cannot answer that Yes or No.
 6 Q Why can't you answer that Yes or No?
 7 A Because there's a premise that
 8 hasn't been stated here, we're talking about a
 9 written document and we're talking about the
 10 party's intent.
 11 Q Is this document, Schedule 1.1(b),
 12 unclear to you?
 13 A Yes.
 14 Q How is it unclear to you?
 15 A The asset that purports to be
 16 transferred from Novell to SCO in the intent of
 17 the parties will ex -- will include, to my reading
 18 or to my knowledge, even though I don't remember
 19 the specific terms of this agreement, the
 20 intention was to convey all of these ownership and
 21 auxillary ownership rights to the asset including
 22 copyright. And the fact that there is this kind
 23 of an exclusion there tells me that there is an
 24 ambiguity in this agreement or a mutual mistake
 25 which wipes out any kind of an integration clause.

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1 I don't agree that that's what the agreement
 2 means.
 3 Q Can you tell me in your view what is
 4 ambiguous about the exclusion on Schedule 1.1(b)
 5 of, quote, all copyrights and trademarks except
 6 for the trademarks UNIX and UnixWare?
 7 MR. NORMAND: Objection to form.
 8 Mischaracterizes his testimony.
 9 A Can you repeat that question,
 10 please?
 11 Q Can you tell me in your view what is
 12 ambiguous about the exclusion on Schedule 1.1(b)
 13 of, quote, all copyrights and trademarks except
 14 for the trademarks UNIX and UnixWare?
 15 A I don't think you can exclude a
 16 copyright in this kind of an asset transfer. I
 17 think you can exclude a copyright if you're
 18 transferring the physical manifestation of the
 19 asset, but when you purport to transfer the whole
 20 asset and all the business and everything else I
 21 think inherent in that is going to be the
 22 copyright and it's a contradiction in terms for
 23 the copyright to be excluded like this.
 24 Q So I take it if you had seen this in
 25 the course of the negotiations you would have

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1 Q Do you know whether Mr. Bradford
 2 personally was involved in the drafting of the APA
 3 at all?
 4 A No, I don't know that.
 5 Q Was it your understanding at the
 6 time of the drafting or negotiation of the APA
 7 that Mr. Bradford was personally involved at all?
 8 A Yes.
 9 MR. BRAKEBILL: Form.
 10 BY MR. NORMAND:
 11 Q Did Mr. Bradford ever tell you that
 12 Novell was retaining any UNIX or UnixWare
 13 copyrights with respect to the APA?
 14 MR. BRAKEBILL: Form.
 15 A No.
 16 Q Did Mr. Bradford ever tell you that
 17 he had informed Wilson Sonsini lawyers to draft
 18 the APA so as to have Novell retain any UNIX or
 19 UnixWare copyrights?
 20 A No.
 21 Q Mr. Levine, from the time of the APA
 22 in 1995 until you left Santa Cruz in 2000, did you
 23 ever hear anyone whether inside or outside of
 24 Santa Cruz or inside or outside of Novell say that
 25 Novell had retained the UNIX or UnixWare

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1 copyrights?
 2 A No.
 3 Q If you had heard anyone make such a
 4 statement, would that have been a surprise to you?
 5 A Very much so, yeah.
 6 Q And why do you say "very much so"?
 7 A My personal experience with the
 8 couple of years that I spent at Novell was that it
 9 was a very ethical company and I, I was very
 10 impressed with that.
 11 Q And how does that fact bear on your
 12 answer, the fact that you had the view that Novell
 13 was an ethical company?
 14 A Was ethical and I believe that being
 15 an ethical company in its dealings with its
 16 partners or transferees or whatever it is that
 17 they would not resort to withholding information
 18 or trying to withhold something that the
 19 transferee in this case would be entitled to.
 20 Q I wanted to ask you, Mr. Levine,
 21 about the APA which was presented to you as an
 22 exhibit and was previously marked in this case as
 23 Exhibit 1. And I think you've testified in
 24 response to Mr. Brakebill's questions that it was
 25 your view that the transfer of the UNIX and

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1 UnixWare copyrights was, quote, inherent in the
 2 APA, do you recall testimony to that effect?
 3 MR. BRAKEBILL: Mischaracterizes
 4 testimony.
 5 A I said something like that, yeah, I
 6 don't remember the exact words.
 7 Q What would the, what would the words
 8 that you would use be?
 9 MR. BRAKEBILL: Mischaracterizes
 10 testimony. It speaks for itself.
 11 BY MR. NORMAND:
 12 Q As I ask you now, what words would
 13 you use to describe your view that the copyrights
 14 had been transferred?
 15 A Right. That the transfer of the
 16 business, including both the physical assets and
 17 the intellectual property assets, would
 18 automatically convey the copyright along with the
 19 rest of the business assets.
 20 Q I want to direct your attention in
 21 the APA, Mr. Levine, to the page with the Bates
 22 number 950 on the bottom right.
 23 A (Complies.)
 24 Q In looking at the first paragraph
 25 Roman I of Schedule 1.1(a) of the Asset Schedule,

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1 and that language says, quote, All rights and
 2 ownership of UNIX and UnixWare, including, but not
 3 limited to all versions of UNIX and UnixWare, and
 4 all copies of UNIX and UnixWare, including
 5 revisions and updates and progress, dot, dot, dot,
 6 including source code, dot, dot, dot, such assets
 7 to include without limitation the following, and
 8 then there's a list of source code products,
 9 binary product releases, products under
 10 development and other technology, do you see that
 11 language?
 12 A I do.
 13 Q How does that language bear on your
 14 understanding at the time of the APA and today
 15 that the UNIX copyrights and UnixWare copyrights
 16 were among the assets transferred under the APA?
 17 A Do you mean the fact that these are
 18 listed specifically as categories?
 19 Q I mean to ask you about the scope of
 20 Roman I.
 21 A Oh, the scope of Roman I with or
 22 without this listing, all rights and ownership of
 23 UNIX and UnixWare, that gives all the components
 24 of the business, including physical components and
 25 intellectual components, to my mind will carry

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<p>1 with it the transfer of any copyrights that apply 2 to them. 3 Q Mr. Brakebill asked you a couple of 4 questions earlier on the issue of whether Santa 5 Cruz had at the very least been licensed the right 6 to use and to make copies of the UNIX and UnixWare 7 source code, do you remember those questions? 8 A I believe so, yeah. 9 MR. BRAKEBILL: Mischaracterizes my 10 questions. 11 BY MR. NORMAND: 12 Q Is it your view that Santa Cruz 13 under the APA merely took a license to use UNIX 14 and UnixWare source code? 15 MR. BRAKEBILL: Form. 16 A I'm sorry, can I hear the last part 17 of that? 18 Q Is it your view that under the Asset 19 Purchase Agreement between Novell and Santa Cruz 20 that Santa Cruz merely acquired a license from 21 Novell to use the UNIX and UnixWare source code? 22 A No, they obtained a full right, 23 title and interest in ownership of that asset. 24 Q I wanted to ask you, Mr. Levine, 25 about Exhibit 125 which is titled AT&T Technology,</p>	<p>1 BY MR. NORMAND: 2 Q In other words, if a licensee -- 3 MR. BRAKEBILL: -- as to all the 4 questions. 5 BY MR. NORMAND: 6 Q If a licensee had entered into a 7 software agreement and sublicensing agreement and 8 no other agreement with AT&T, what rights would it 9 have, if any, with respect to binary products or 10 sublicensed products? 11 MR. BRAKEBILL: Form. Calls for a 12 legal conclusion as to this whole series of 13 questions. 14 A If you mean a form sublicensing 15 agreement without any identification of the 16 product, then they would have no rights. 17 Q I'm handing you, Mr. Levine, what's 18 previously been marked as Exhibit 1009 which is 19 titled Amendment No. 2 to the Asset Purchase 20 Agreement. 21 MR. NORMAND: Do you have this? 22 MR. BRAKEBILL: Yeah. 23 BY MR. NORMAND: 24 Q Mr. Brakebill asked you earlier 25 whether to the best of your knowledge you have any</p>
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<p>1 Inc. Software Agreement, and I think Mr. Brakebill 2 identified this as the Software Agreement from 3 1985 regarding Sequent Computer Systems. 4 A Yes. 5 Q Do you remember reviewing the 6 document? 7 A Yes. 8 Q Did AT&T's software agreements 9 necessarily pertain to SVRX source code? 10 A Not in its form as given to me. 11 Q If a prospective licensee had signed 12 a software agreement and no other documentation 13 with AT&T, what rights with respect to source code 14 did it have? 15 A It would have no rights under the 16 agreement because there was no product identified. 17 Q And how would that licensee gain 18 rights to use source code from AT&T? 19 A It would have to obtain a supplement 20 and schedule for that product to define what it 21 was it was licensing and pay the fees. 22 Q And would the same be true of AT&T's 23 sublicensing agreements? 24 MR. BRAKEBILL: Form. Calls for a 25 legal conclusion --</p>	<p>1 views or viewpoints regarding any amendments to 2 the APA, do you remember a question in that 3 spirit? 4 A Yes, and I recall that I said that I 5 hadn't reviewed this or I wasn't sure what he was 6 referring to, I couldn't, I couldn't answer it. 7 Q Do you recall whether you had 8 occasion to review Amendment No. 2 to the Asset 9 Purchase Agreement? 10 A Yes, I have. 11 Q And I'm looking at paragraph A of 12 Amendment No. 2 which says "With respect to 13 Schedule 1.1(b) of the Agreement titled Excluded 14 Assets, Section V, subsection A shall be revised 15 to read: All copyrights and trademarks, except 16 for the copyrights and trademarks owned by Novell 17 as of the date of the Agreement required for SCO 18 to exercise its rights with respect to the 19 acquisition of UNIX and UnixWare technologies," do 20 you see that language? 21 A I do. 22 Q Do you have a view as to what 23 copyrights it was necessary for SCO to have to 24 exercise its rights with respect to the 25 acquisition of UNIX and UnixWare technologies?</p>

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<p style="text-align: right;">Page 162</p> <p>1 MR. BRAKEBILL: Objection to form. 2 Foundation. Calls for speculation. 3 A Well, in my mind this is, this is 4 confirmatory of my view that the, the copyrights 5 that are now specified in this amendment would 6 have been transferred in any event because of the 7 scope of the rights in the transfer of the assets, 8 and this is confirmatory of that. This leaves no 9 doubt on black and white that, that this is what 10 was intended. 11 Q I'd like to ask you, Mr. Levine, 12 about Exhibit 202 which should be in your pile 13 somewhere. 14 Exhibit 202 has the fax cover sheet 15 indicating that it's from Burt Levine, yourself, 16 to Aaron Alter. 17 A Okay. 18 Q Dated September 18th, 1995. And -- 19 A Yes. 20 Q -- attached to the fax cover sheet 21 is I believe your markup of Schedule 1.1(a) and 22 the Seller Disclosure Statement, do you see that? 23 A Yes. 24 Q Do you remember reviewing the 25 document earlier?</p>	<p style="text-align: right;">Page 164</p> <p>1 the schedule attached as part of Exhibit 202, was 2 it your view that the language of the APA served 3 to retain for Novell the UNIX or UnixWare 4 copyrights? 5 MR. BRAKEBILL: Form. 6 A No. No. 7 Q I'm going to show you, Mr. Levine, 8 or have you turn your attention to Exhibit 203. 9 A (Complies.) 10 Q Exhibit 203 is the document with a 11 telecopy cover sheet under Wilson Sonsini 12 letterhead to you from Shannon Whisenant dated 13 September 18th, 1995, and attached to the cover 14 sheet is a version of Schedule 1.1(a) of the APA, 15 and it's stamped Draft on each page. 16 A Okay. 17 Q And the same is true for Schedule 18 1.1(b). Do you remember reviewing this document 19 this morning? 20 A Yes. 21 Q Was it ever your view in reviewing 22 the document attached as part of Exhibit 203 that 23 Novell intended to retain the UNIX or UnixWare 24 copyrights under the APA? 25 A No.</p>
<p style="text-align: right;">Page 163</p> <p>1 A Yes. 2 Q At any time when you were reviewing 3 this document in 1995 was it your view that Novell 4 was intending to retain the UNIX or UnixWare 5 copyrights under the APA? 6 MR. BRAKEBILL: Form. 7 A Not in the least, no. 8 THE REPORTER: I'm sorry, I didn't 9 hear your answer. 10 THE WITNESS: "Not in the least, 11 no." 12 BY MR. NORMAND: 13 Q At any time when you were reviewing 14 the schedule attached as part of Exhibit 202, was 15 it your view that the language of the APA served 16 to retain for Novell the UNIX or UnixWare 17 copyrights? 18 MR. BRAKEBILL: Form. 19 A Do you mean the APA in its original 20 form? 21 Q In the form that you were reviewing 22 it in the markup reflected in Exhibit 202. 23 You want the question read back? 24 A Please. 25 Q At any time when you were reviewing</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. BRAKEBILL: Form. 2 BY MR. NORMAND: 3 Q Was it ever your view when reviewing 4 the language of the document attached as Exhibit 5 203 that the language of the APA served to retain 6 for Novell the UNIX or UnixWare copyrights? 7 MR. BRAKEBILL: Form. 8 A No. 9 Q I direct your attention, Mr. Levine, 10 to Exhibit 204. 11 A (Complies.) 12 Q Exhibit 204 is the document with the 13 cover sheet under Novell's letterhead dated 14 September 15th, 1995 from you to Shannon 15 Whisenant, and attached to the document, among 16 other things, is your markup of the Seller 17 Disclosure Schedule and towards the back half of 18 the document your handwriting appears? 19 A Yes. 20 Q Do you remember reviewing this 21 document this morning? 22 A Yes. 23 Q Or this afternoon? 24 A Yes. 25 Q Was it your view at any time in</p>

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EXHIBIT 15

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

<p>THE SCO GROUP, INC., Plaintiff/Counterclaim Defendant, v. NOVELL, INC., Defendant/Counterclaim-Plaintiff.</p>	<p>DECLARATION OF WILLIAM M. BRODERICK Case No. 2:04CV00139 Honorable Dale A. Kimball Magistrate Judge Brooke C. Wells</p>
--	--

I, William M. Broderick, declare as follows:

1. I submit this declaration in connection with The SCO Group v. Novell, Inc., Civil Action No. 2:04CV00139 DAK (D. Utah 2004).
2. I am Director of Software Licensing for The SCO Group, Inc. ('SCO'). My office is located in Murray Hill, New Jersey.
3. Unless otherwise noted or evident from context, this Declaration is based on my personal knowledge.
4. Since December 1991, I have been continuously employed with the successive companies that have owned the UNIX technology and business.
5. From December 1991 to June 1993, I was the Manager of Sales Operation for UNIX System Laboratories ('USL'), a company that owned and operated the UNIX business that AT&T originally created.
6. When AT&T sold USL to Novell, Inc. ('Novell') in June 1993, I remained with the UNIX business as a Novell employee performing substantially the same work as at USL. During most of my time at Novell, my title was Contract Manager.
7. When Novell sold the UNIX business to The Santa Cruz Operation ('Santa Cruz') in 1995, I remained with the UNIX business as a Santa Cruz employee performing substantially the same work as at Novell. During my employment at Santa Cruz, my title was Manager, Law and Corporate Affairs.
8. When Santa Cruz sold the UNIX business to Caldera International, Inc. ('Caldera') in 2001, I remained with the UNIX business as a Caldera employee performing essentially the same work as at Santa Cruz. For a short period after the sale to Caldera, my official

title remained the same, but it later changed to my current title, Director of Software Licensing. In 2003, Caldera changed its name to SCO.

9. In sum, my career has followed the UNIX business as it has been transferred successively from AT&T/USL to Novell to Santa Cruz to Caldera (now SCO). I personally witnessed and experienced the transition of the business from one owner to the next.
10. As part of my duties as Contract Manager for Novell and as Manager, Law and Corporate Affairs, for Santa Cruz, I was responsible for implementing the APA, and was thus required to understand the meaning and intent of the APA. In the performance of my duties for Novell and Santa Cruz, I also attended several meetings, including Novell company-wide meetings, during which the purpose and intent of the APA explained. I also participated in the transition team, composed of representatives of both companies, that was responsible for the transitioning of the business to Santa Cruz.
11. During the transition period that preceded and followed the closing of the transaction, and the seven-plus years that followed the execution of the APA, I had numerous communications and interactions with numerous people on both sides of the transaction, including people who were directly involved in negotiating and implementing the APA. Without exception, those people always manifested a common understanding that Novell intended to and did transfer the entire UNIX and UnixWare business to Santa Cruz under the APA, including all rights, title and interest in the assets and properties related to that business, with the exception of interest in certain binary royalties. During that time, no one ever communicated or otherwise indicated to me a contrary understanding.

12. In addition to transferring the business to Santa Cruz, the APA helped forge a strategic relationship between the parties. Santa Cruz planned to merge its own UNIX-derivative product, Open Server 5.1, with UnixWare Release 2.1, to create a standard high-volume UnixWare operating system that also integrated Novell's Netware networking services. In addition, as described below, as part of the payment for the transferred business, Novell took an equity position in Santa Cruz and obtained a contingent interest in the performance of UnixWare, including the merged product.

The SVRX Licenses

13. The agreements Novell transferred to Santa Cruz under the APA included all software agreements, sublicensing agreements, and product supplements and related contracts. The software agreements delineated the general rights and conditions for a licensee's internal use of any UNIX or UnixWare product the licensee chose to license under a product supplement. The sublicensing agreement outlined the rights and conditions for a licensee's distribution of such a product in binary form. The supplements were the licenses for individual UNIX or UnixWare products. Thus, for example, all licensees who licensed UNIX System V, Release 3.2 signed the standard supplement licensing that product. The contracts related to the supplements included amendments to the standard product supplements, including letter-agreements adjusting binary royalties due under the supplements.
14. Like its predecessors and successors, Novell licensed UNIX and UnixWare through this set of agreements. While the software and sublicensing agreements described general rights and obligations that would apply if a licensee licensed a product, they did not

themselves license any product. They did not identify any product, specify the CPUs on which use of the product was authorized, require the payment of any consideration, or list any fees or royalties to be paid by the licensee. Rather, that information was contained in the supplement for each product.

15. Each time a licensee sought to license a UNIX or UnixWare product, the licensee executed a supplement for that specific product. If the licensee later sought to license the same source code on additional CPUs, the licensee executed a supplement licensing those additional CPUs. If a licensee sought an additional distribution (that is, another copy) of the source code, the licensee entered into a supplement for that additional distribution. If a licensee sought to license a different UNIX or UnixWare product, such as a later version or release, the parties executed the supplement for that specific product. In the licensing groups at Novell and its predecessors and successors, we understood an SVRX license to be a SVRX product supplement.
16. Each product supplement included a product schedule that listed the specific technologies licensed as part of the product. The schedule also listed the fees corresponding to the product, including the one-time 'right-to-use fee' for use of the source code internally on a designated CPU, right-to-use fees for each additional CPU, the one-time 'sublicensing fee' for the right to distribute binary copies of a product based on the licensed product, and the 'per-copy fees' to be paid by the licensee for each such copy distributed by the licensee. In the licensing group at Novell and its predecessors and successors, we often used the terms 'supplement' and 'schedule' interchangeably.

17. The software agreement itself bears out the relationship between the foregoing agreements. The software agreement granted the right to create derivative works based on the licensed product, for example, provided that the licensee treated any such modifications and derivatives the same as the licensed product and kept any such modifications and derivative work confidential. A licensee, however, was permitted to disclose a derivative work to an equivalent-scope licensee, that is, a licensee who had executed a supplement, or license, for the same or a later version of UNIX or UnixWare.

The Configuration of Santa Cruz's Payment for the Business

18. As I stated previously, my understanding was that Novell intended to transfer, and Santa Cruz to acquire, the entire UNIX and UnixWare business under the APA. However, because Santa Cruz could not afford the price that Novell asked for the business, the parties agreed that Novell would retain interests in certain royalties.
19. Based on what Novell told those of us in the Novell licensing group when the APA was announced and explained, my understanding is that Novell and Santa Cruz agreed that Novell would retain an interest in the continuing binary royalties paid under the SVRX licenses to which Novell was a party and that were transferred to Santa Cruz under the APA. That is, the parties agreed that Novell would retain an interest in the per-copy fees that the then-current SVRX licensees would continue to pay under their existing SVRX product supplements for their distribution of binary products based on the licensed SVRX product.
20. The parties also agreed that Santa Cruz would pay royalties for the shipment or distribution of certain UnixWare-related products if those shipments and distributions

reached certain annual benchmarks through 2002. Novell never received those royalties because the required benchmarks were never reached.

21. My understanding is that Novell's financial interest in the SVRX binary royalties and its contingent interest in the UnixWare-related royalties were not intended to grant Novell any other interest of any kind in the UNIX and UnixWare business. Novell and Santa Cruz simply intended for those royalties to bridge the gap between the price that Santa Cruz could pay for the business and the value that Novell deemed appropriate.

Novell's Limited Rights Under Sections 1.2(b) and 4.16(b) of the APA

22. Under Section 1.2(b), the parties agreed that the SVRX binary royalties would continue to be recognized as royalties by Novell on an ongoing basis and Santa Cruz was obligated to collect and pass through to Novell 100% of these SVRX binary royalties, subject to a 5% administrative fee that Novell paid back to Santa Cruz. Section 1.2(b) also granted Novell the right to receive periodic reports and conduct audits of those royalties and the contingent UnixWare-related royalties.
23. Amendment No. 1 was intended to clarify that Novell's interest in the SVRX product licenses transferred to Santa Cruz was limited to the binary royalties listed in the corresponding product schedules. Accordingly, Amendment No. 1 expressly provided that, notwithstanding Novell's interest in the binary royalties due under those licenses, Santa Cruz would retain every other category of fees that a licensee could pay under such a product license, namely, source code fees for additional copies of the SVRX product or for its use on additional CPUs. (The one-time right-to-use and sublicensing fees would

have already been paid to Novell upon the execution of the licenses because the licenses transferred to Santa Cruz were licenses to which Novell was a party.)

24. Under Section 4.16(b) of the APA, the parties granted Novell certain rights and imposed on Santa Cruz certain obligations with respect to the SVRX licenses. Novell and Santa Cruz intended for those rights and obligations to protect Novell's interest in the binary royalties due under the transferred SVRX licenses. The parties did not intend for Section 4.16(b) to apply to any other assets or properties transferred to Santa Cruz under the APA.
25. Again based on the training I received from Novell and my experience licensing UNIX products at Novell and its successors, my understanding is that Amendment No. 1 was intended to clarify that Section 4.16(b) applied only to Novell's interest in the SVRX binary royalties I have described above. Accordingly, Amendment No. 1 provided that, notwithstanding Novell's interest in those royalties, Santa Cruz obtained the right to license the SVRX source code without any restrictions except when such action by Santa Cruz would adversely affect Novell's rights to royalties in the current SVRX licenses. Specifically, Amendment No. 1 provided that Santa Cruz could amend the SVRX licenses to license additional distributions of the licensed product, additional designated CPUs, or the SVRX source code incidental to the licensing of UnixWare products.
26. UnixWare products, like SVRX products, are built on prior versions of the same technology. Accordingly, each time Novell licensed a UnixWare product, Novell also granted the right to use prior UnixWare and SVRX products by listing them in the schedule for the licensed product. Because Santa Cruz could not have licensed

UnixWare products going forward without the ability to also license the legacy SVRX products on which UnixWare was built, Amendment No. 1 provided that Santa Cruz could amend or enter into new SVRX license as an incidental part of its UnixWare licenses.

27. Amendment No. 1 otherwise prohibited Santa Cruz from entering into new SVRX licenses without Novell's prior approval. Like the other provisions in Sections 1.2(b) and 4.6(b), this provision was intended solely to protect Novell's limited financial interest in the SVRX royalties and contingent UnixWare royalties. As the SVRX was the legacy product and both parties had an interest in the growth of UnixWare products, the parties did not anticipate that Santa Cruz would enter into new SVRX product licenses but rather would offer UnixWare to new licensees or licensees seeking to upgrade their product. The prior-approval provision, therefore, was specifically intended to preclude Santa Cruz from entering into SVRX licenses that cut out Novell from its royalty interests.
28. In other words, the provision was intended to apply to instances where Santa Cruz might have sold an SVRX licensee a new version of the product, extinguishing the SVRX binary royalties due to Novell without converting the existing SVRX license to a UnixWare license in which Novell would have a contingent interest. As the sole purpose and intent of Sections 1.2(b) and 4.1(b) were to secure and protect Novell's royalty interests, the prior-approval provision did not apply to any agreement that Santa Cruz or its successors might enter into that did not disturb those interests.

SCO's 2003 Agreements with Sun and Microsoft

29. I understand that Novell claims that the payments SCO received for its 2003 agreements with Sun and Microsoft are SVRX royalties owed to Novell under Section 1.2(b) of the APA. That claim is inconsistent with the intent and meaning of the APA as they were explained to me by Novell. In 1994, Novell granted Sun a buyout of its obligations to pay any SVRX fees under its SVRX license. Similarly, Microsoft was under no obligation to pay any SVRX binary royalties under its SVRX license. Section 1.2(b) was not intended to apply, and in my view does not apply, to any payments that SCO received from licensing its technology to Sun and Microsoft in 2003.
30. Novell did not negotiate for or obtain any right under the APA to receive any fees or royalties that Santa Cruz might collect in licensing its fully acquired UNIX and UnixWare code without disturbing Novell's royalty interest described above. Sections 1.2 and 4.16 of the APA do not apply to the 2003 Sun and Microsoft agreements.
31. Insofar as those agreements are licenses to technology, moreover, they are licenses for UnixWare. Consistent with the licensing practices of Novell and its predecessors and successors and consistent with the reality of licensing products that are built on prior technology, the license for the prior SVRX products contained in those agreements is incidental to the license for UnixWare. Amendment No. 1 to the APA thus expressly permits both agreements. The interest that Novell had in such UnixWare licenses expired in 2002. Novell cannot claim any interest in the 2003 Sun and Microsoft agreements.
32. I also understand that Novell has claimed that the rights it retained under Section 4.16(b) of the APA extend to any agreements related to SVRX, including those that Santa Cruz and its successors entered into following the APA. That claim also is inconsistent with

the intent and meaning of the APA, as I understand them. The only interest that Novell retained in the UNIX business was the right to continue receiving SVRX binary royalties under the product supplements, or licenses, transferred under the APA. Novell and Santa Cruz did not intend for Novell's rights under Section 4.16(b) to extend either to new SVRX agreements that did not disturb Novell's limited royalty interests, or to any software and sublicensing agreements whether then existing or not.

Amendment No. 2

33. In April 1996, Novell attempted to grant IBM a buyout of its binary royalty obligations under its System V, Release 3.2 product license. Santa Cruz objected for several reasons. First, the purported buyout also extended IBM's rights to distribute the source code. Second, although Santa Cruz understood that Novell had a 95% interest in the binary royalties that IBM would pay for the distribution of that product, Santa Cruz explained that the buyout violated the APA because it denied Santa Cruz the opportunity to convert IBM's SVRX license to UnixWare, as intended by the parties under the APA. Although Novell was willing to forego the royalties it might receive from the licensing of UnixWare in favor of an up-front payment of the SVRX binary royalties, Santa Cruz understood that buyouts hurt its UnixWare business going forward. In addition, Santa Cruz pointed out that Novell, in a bid to recognize revenue for that quarter, had underestimated the royalties that IBM would pay absent a buyout, so that the buyout diminished Santa Cruz's 5% percent interest in the royalties.
34. After months of negotiations, the parties agreed that Novell could not enter into any new royalty buyouts without Santa Cruz's participation and approval. Section B of

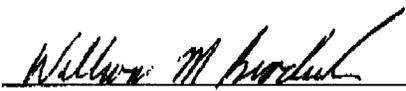
Amendment No. 2 was intended to prevent the reoccurrence of a unilateral buyout by Novell. Amendment No. 2 was a protection that Santa Cruz insisted upon before agreeing to the buyout that the parties jointly granted IBM. Thus, I understood Amendment No. 2 to be an acknowledgement by Novell that even its interest in the SVRX binary royalties was subject to Santa Cruz's rights under the APA.

35. I understand that Novell now argues that SCO has violated Amendment No. 2 by entering into the 2003 Sun and Microsoft agreements without Novell's involvement. That position is simply wrong. The buyout provisions of Amendment No. 2 apply only to the buyouts, and specifically to buyouts of SVRX binary royalties due under the SVRX licenses transferred to Santa Cruz under the APA. The Sun and Microsoft agreements are UnixWare licenses that only incidentally licensed prior SVRX products. They did not grant Sun and Microsoft any buyouts because, prior to the APA, those parties had either previously bought out their obligations to pay SVRX binary royalties or did not have an obligation to pay SVRX binary royalties under their SVRX licenses. Microsoft terminated its software agreement and SVRX licenses in 1998.
36. I understand that Novell also takes the position that the interests it was granted in the APA and amendments thereto to protect the royalty stream it retained gave Novell protection from competition with respect to competitors such as Sun and Microsoft. The APA and its amendments were never intended to afford Novell any such prospective protections. There was never any discussion or agreement of any kind regarding any such protections. In fact, the only non-compete provision in the APA imposed restrictions on Novell to the benefit of Santa Cruz.

37. In 1999, SVRX licensee Hewlett-Packard ('HP') sent the Santa Cruz legal department a check for several million dollars purporting to exercise a so-called favored pricing clause in its UNIX agreement. In compliance with Amendment No. 2 to the APA, Santa Cruz contacted Novell to determine if the parties were willing to grant HP the proposed buyout.
38. Under an agreement dated January 28, 2000, Novell and Santa Cruz bilaterally granted HP a buyout for twenty-two million dollars, several times the amount of the check received by Santa Cruz.
39. In 1994, Novell gave Texas Instruments ('TI') a three-year binary-royalty buyout for specified distributions of its SVRX product with renewal rights after the period expired. The price of the buyout was \$500,000. In 1997, after Santa Cruz had acquired the UNIX and UnixWare business, TI contacted the Santa Cruz legal department seeking to renew the buyout for an additional three-year period at the same price.
40. In an effort to comply with Amendment No. 2, over the subsequent several months, I made every effort to contact the persons at Novell with the authority to review the proposed renewal, including the persons in Novell finance who received Santa Cruz's quarterly royalty reports. After receiving no response from Novell, and to comply with Santa Cruz's contractual obligations to TI, Santa Cruz unilaterally granted TI the renewal and sent Novell its 95% share of the \$500,000 payment. In 2000 and 2003, Santa Cruz and SCO again granted TI a renewal and again sent Novell its 95% share of the \$500,000 payment. It was not until the 2006 renewal, after Novell filed this lawsuit, that Novell took an active participation in the renewal negotiations.

41. Prior to its sale of the UNIX and UnixWare business to Santa Cruz, Novell granted Silicon Graphics, Inc. ("SGI") a buyout of its SVRX binary-royalty obligations. On April 2, 1996, Cray Research, Inc. ("Cray"), a distinct SVRX licensee, became a subsidiary of SGI. Later that year, Cray wrote me stating that it intended to operate under the terms of the SGI buyout agreement. Although Santa Cruz had only a 5% interest in the Cray's royalty stream, I negotiated with Cray for nearly seven months. On May 6, 1997, after Santa Cruz had expended resources far above the 5% administrative fee that it would get, I turned the dispute over to Novell.
42. In doing so, I advised Novell that it had no right under the APA to negotiate source code rights or fees, and Novell agreed. In fact, before negotiating with Cray, Novell asked Santa Cruz to execute a letter agreement to "enable Novell to negotiate directly with Cray on the issue of Cray's intention to operate under the SGI Agreements for all SVRX royalty-generating binary shipment without requiring direct involvement from SCO."
43. I declare under penalty of perjury that the foregoing is true and correct.

Executed: December 11, 2006



William M. Broderick

EXHIBIT 16

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION
CASE NO. 2:04 CV 00139

THE SCO GROUP, INC., a Delaware
corporation,

Plaintiffs and Counterclaim Defendants,

vs.

NOVELL, INC.,

Defendants and Counterclaim Plaintiffs.

VIDEOTAPED DEPOSITION UNDER ORAL EXAMINATION OF

WILLIAM BRODERICK

DATE: February 1, 2007

REPORTED BY: MICHAEL FRIEDMAN, CCR

ESQUIRE DEPOSITION SERVICES
90 Woodbridge Center Drive
Suite 340
Woodbridge, New Jersey 07095
(732) 283-1060 or (800) 247-8366

JOB # 642838

<p style="text-align: right;">Page 46</p> <p>1 then over the years I have worked -- we in 2 the legal department, we've had meetings and 3 discussed contracts and terms, and why they 4 were included and why we will not change 5 them, or why we would. 6 When we were Santa Cruz, we would 7 have staff meetings, and occasionally during 8 each of the -- during the staff meetings 9 somebody would be assigned to discuss a 10 certain aspect of a contract. 11 Q Any other training sessions 12 you can think of? 13 A Not right now. 14 Q Have you ever received written 15 materials at any of those training sessions 16 that you kept? 17 A No. 18 Q So, I mean, I'm not familiar 19 with -- I don't have firsthand knowledge of 20 someone in your line of business and 21 expertise, but I'm just wondering, is there 22 a -- I use the word treatise. 23 Is there some kind of Bible 24 you look to when questions come up, how to 25 draft materials, or some kind of guide book,</p>	<p style="text-align: right;">Page 48</p> <p>1 yourself. 2 A (Witness reviewing.) 3 Okay. 4 Q Can you just read the first 5 sentence out loud? 6 A "My understanding of the sale of 7 the UNIX assets from Novell to Santa Cruz was 8 that the UNIX copyrights were transferred." 9 Q What's the basis for your 10 statement there? 11 A It's an understanding of the asset 12 purchase agreement, and discussions with 13 people at Santa Cruz. 14 Q Why don't you tell me about 15 the people at Santa Cruz who you discussed 16 this with. 17 A Well, actually, it was more than 18 the people at Santa Cruz. It was -- with the 19 discussions, once we were told that the 20 business was being sold to Santa Cruz, we had 21 company-wide meetings. 22 And then we had smaller meetings 23 within the functional groups, when we were 24 identified which company we were going to be 25 with.</p>
<p style="text-align: right;">Page 47</p> <p>1 anything like that that you have in your 2 office? 3 A No. The agreements were prepared 4 with review with the corporate attorneys, and 5 we work with those agreements, and we will 6 occasionally go through the agreements and 7 see if they need to be updated for any reason 8 with -- with in-house legal, and I work with 9 the agreements. 10 MR. PERNICK: Let's take a break. 11 THE VIDEOGRAPHER: Off the record. 12 10:44. 13 (Brief recess taken from 10:42 to 14 10:51.) 15 THE VIDEOGRAPHER: Stand by, 16 please. Back on the record, 10:52. 17 Q Mr. Broderick, could you look 18 at what we've marked at Exhibit 29, which is 19 your declaration in the SCO versus IBM case 20 dated November 7, 2006. Actually, I think 21 this declaration says it's in connection with 22 both the IBM case and this case, but here's 23 that declaration. 24 I would ask you to look at 25 paragraph 7, please. You can just read it to</p>	<p style="text-align: right;">Page 49</p> <p>1 Q Are you still at Novell when 2 you say you had those meetings? 3 A I think we were still officially 4 Novell employees, and there was one or two 5 company-wide meetings held in the cafeteria 6 in the building in Florham Park, and then we 7 had separate -- what I would call breakout 8 meetings. 9 There were a lot of transition 10 teams set up, and we had meetings related to 11 contracts, and there was a contracts 12 transition team which included people from 13 Santa Cruz and Novell, and we had discussions 14 with them. 15 Q Are you saying that in some or 16 all of these meetings, it was said that 17 copyrights were transferred from Novell to 18 Santa Cruz? 19 A There was no -- 20 MR. NORMAND: Objection to form. 21 A There was no specific discussion of 22 copyrights, but in the initial company-wide 23 meeting, we were told -- I believe the 24 wording was Novell is going to focus on its 25 core technology, which is Net Ware, and</p>

<p style="text-align: right;">Page 50</p> <p>1 they're going to be selling the UNIX Ware 2 business to Santa Cruz. 3 And then in the breakout meetings, 4 we discussed it further, and we were told 5 they sold all right, title and interest in 6 the business, which was defined as the UNIX 7 and UNIX Ware business, and to the assets of 8 the business, and the assets were described 9 as the source code, the binaries, development 10 projects, all contracts. 11 And our opinion as contracts 12 people, if you sell all right, title and 13 interest in the assets, the assets include 14 source code. Well, if you're selling all 15 right, title and interest in the source code, 16 the copyrights go. 17 It was not -- they were not 18 specifically addressed in any of our 19 discussions, because it was just assumed 20 totally illogical for copyrights not to go 21 with the source code if you're selling all 22 title, right and interest in the source code. 23 Q But to clarify, nobody said in 24 any of these meetings that the copyrights 25 were also being transferred to Santa Cruz.</p> <p style="text-align: right;">Page 51</p> <p>1 Is that right? 2 MR. NORMAND: Objection to form. 3 A I don't remember anybody 4 specifically discussing copyrights, except to 5 the point in some of the meetings they talked 6 about activities related to changing the 7 copyright notices in the source code to Santa 8 Cruz Operation, Inc. 9 Q In UNIX code? 10 A In the source code products. It 11 was a long time ago. I don't remember if 12 they identified which one. 13 I think they were just talking 14 about source code product activities, and 15 developers, if they had time to do certain 16 things. 17 Q Do you remember what meeting 18 that was, when it took place, where it took 19 place, anything like that? 20 A During the transition time, people 21 were talking about activities necessary to 22 move the business to Santa Cruz, and there 23 were a lot of meetings going on with trying 24 to identify activities that had to be done, 25 who would do them, who was staying at Novell,</p>	<p style="text-align: right;">Page 52</p> <p>1 who was going to Santa Cruz, who was going to 2 HP, who was not, and who would be doing what 3 functions, and did we have resources to get 4 everything done, what the timing would be. 5 Q Do you remember who said that 6 there was going to be work on changing the 7 copyrights in the source code? 8 MR. NORMAND: Actually, did you 9 hear the question? What was the 10 question? 11 (Whereupon the record was read back 12 by the reporter.) 13 A It would be a guess. I'm trying to 14 picture the meetings and the discussions that 15 were going on, and the probable people -- it 16 would be a guess. 17 You would have to confirm it with 18 those people. I believe John Maciaszek would 19 have been involved in it, in the discussion, 20 possibly Lisa Osmik. 21 She was on the technical side. 22 There were a lot of meetings and a lot of 23 people going in and out, and a lot of 24 discussions going on. 25 Q Do you remember ever seeing</p> <p style="text-align: right;">Page 53</p> <p>1 anything in writing saying that we need to 2 change the copyrights in the source code? 3 A No, I don't. 4 Q Did you ever look for anything 5 on that topic? 6 MR. NORMAND: Objection, form. 7 Q Did you look for any written 8 materials saying that? 9 A No, I didn't, but as I said 10 earlier, it was illogical for the 11 copyrights -- if they were selling all 12 rights, title and interest in the source 13 code, it was illogical for the copyrights not 14 to go, so there was not a concern, something 15 we went looking for. 16 Q Why would that be illogical? 17 A Well, part of all right, title and 18 ownership in the source code would include 19 the copyrights. Otherwise, how could you 20 protect your source code, if you don't own 21 the copyrights? 22 Q Can you just sell source code? 23 Can't you just give someone the code? 24 A Oh, you never give anybody source 25 code without very strict licensing</p>
<p style="text-align: right;">Page 51</p> <p>1 Is that right? 2 MR. NORMAND: Objection to form. 3 A I don't remember anybody 4 specifically discussing copyrights, except to 5 the point in some of the meetings they talked 6 about activities related to changing the 7 copyright notices in the source code to Santa 8 Cruz Operation, Inc. 9 Q In UNIX code? 10 A In the source code products. It 11 was a long time ago. I don't remember if 12 they identified which one. 13 I think they were just talking 14 about source code product activities, and 15 developers, if they had time to do certain 16 things. 17 Q Do you remember what meeting 18 that was, when it took place, where it took 19 place, anything like that? 20 A During the transition time, people 21 were talking about activities necessary to 22 move the business to Santa Cruz, and there 23 were a lot of meetings going on with trying 24 to identify activities that had to be done, 25 who would do them, who was staying at Novell,</p>	<p style="text-align: right;">Page 53</p> <p>1 anything in writing saying that we need to 2 change the copyrights in the source code? 3 A No, I don't. 4 Q Did you ever look for anything 5 on that topic? 6 MR. NORMAND: Objection, form. 7 Q Did you look for any written 8 materials saying that? 9 A No, I didn't, but as I said 10 earlier, it was illogical for the 11 copyrights -- if they were selling all 12 rights, title and interest in the source 13 code, it was illogical for the copyrights not 14 to go, so there was not a concern, something 15 we went looking for. 16 Q Why would that be illogical? 17 A Well, part of all right, title and 18 ownership in the source code would include 19 the copyrights. Otherwise, how could you 20 protect your source code, if you don't own 21 the copyrights? 22 Q Can you just sell source code? 23 Can't you just give someone the code? 24 A Oh, you never give anybody source 25 code without very strict licensing</p>

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1 engaged in the business of developing a line
2 of software products, currently known as UNIX
3 and UNIX Ware, the sale of binary and source
4 code licenses to various versions of UNIX and
5 UNIX Ware, the support of such products, and
6 the sale of other products, which are
7 directly related to UNIX and UNIX Ware,
8 collectively, the business.

9 Then I go down to section 1.1A,
10 which you had me look at earlier. Purchase
11 and sale of assets, it's not a license to
12 assets, it's a purchase and sale of assets on
13 the terms, and subject to the conditions set
14 forth in this agreement, seller will sell,
15 convey, transfer, assign and deliver to
16 buyer, and buyer will purchase and acquire
17 from seller on the closing date all of
18 seller's right, title and interest in and to
19 the assets, and the properties of seller
20 relating to the business, collectively, the
21 assets.

22 Q You left out --

23 A (Reading.) Identified on schedule
24 1.1A hereto, notwithstanding the foregoing,
25 the assets to be so purchased shall not

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1 include those assets, the excluded assets set
2 forth on 1.1B. Then, if you just quickly
3 take a look at section 1.3AI, intent, it is
4 the intent of the parties hereto that all of
5 the business and all of the seller's backlog
6 in any -- relating to the business be
7 transferred to buyer, accordingly.

8 All parties agree to facilitate the
9 transfer of customers of the business from
10 seller to buyer, following the closing. To
11 me, this is the sale of assets.

12 And if you're going to sell an
13 asset, you sell it all, related to UNIX and
14 UNIX Ware. That's my opinion.

15 Q Even though the agreement
16 expressly says that we're not selling any
17 patents on schedule 1.1B, right?

18 MR. NORMAND: Objection to form.

19 Q You agree it says that?

20 A I agree that that's what the
21 agreement says, but I'm not clear on how you
22 can sell all right, title and interest, and
23 not get the -- and not get the part of the
24 technology that's used to protect it, if
25 there is any.

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1 Q We were talking about patents,
2 but doesn't Roman 5 section 5 of schedule
3 1.1B, the excluded assets, also exclude all
4 copyrights?

5 MR. NORMAND: Objection to form.

6 A I've got the same argument on
7 copyrights. I -- what I just read you before
8 follows through on my opinion on the
9 copyrights.

10 Q You think that the only
11 copyrights that were excluded by section
12 1.1A, and these two schedules, the only
13 copyrights that you think were excluded were
14 the Net Ware and Tuxedo copyrights?

15 A Yes.

16 Q And is that based on your same
17 reasoning, as with patents?

18 A Yes, it is.

19 Q And do you have the same
20 reasoning for trademarks?

21 A Are you talking about where it
22 says, Trademarks, except for the trademarks
23 UNIX and UNIX Ware?

24 Q Yes.

25 A One of the reasons why I have the

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1 opinion that this is related to the Net Ware
2 and the Tuxedo, Net Ware worked as a bundled
3 product, or integrated with UNIX and UNIX
4 Ware. They were excluding that from the
5 assets transferred.

6 So, if you transferred UNIX Ware,
7 if you sold UNIX Ware lock, stock and barrel
8 to Santa Cruz, if it had the Net Ware in it,
9 in order that SCO couldn't say, We now own
10 Net Ware, they listed it on this excluded
11 assets.

12 Within the Net Ware, I believe
13 there were attributes to -- there were UNIX
14 and UNIX Ware and there were attributes to
15 the UNIX and UNIX Ware trademarks, and that's
16 why they exclude it here, except for the
17 trademarks UNIX and UNIX Ware, to the extent
18 they were used in those products.

19 Q I'm sorry, I don't follow,
20 Mr. Broderick. As I understand your
21 reasoning when you were talking about patents
22 and copyrights, you said that you have to
23 interpret this agreement, as -- this schedule
24 implicitly as only applying, only carving
25 out, the patents and copyrights that relate

27 (Pages 102 to 105)

<p style="text-align: right;">Page 106</p> <p>1 to Net Ware and Tuxedo? 2 A Yes. 3 Q You don't think that the 4 patents for UNIX and copyrights for UNIX were 5 ever intended to be on the excluded assets, 6 right? 7 A Correct. 8 MR. NORMAND: Objection to form. 9 Q So, wouldn't that also be true 10 for trademarks? 11 A My explanation on the trademarks 12 was within -- it's my understanding that 13 within the Net Ware product, since it was 14 bundled with UNIX Ware, there were references 15 to UNIX and UNIX Ware which would have had 16 the UNIX and UNIX Ware trademark attribution. 17 That was inside the Net Ware 18 product, built with the Net Ware product in 19 their documentation. So, they're excluding 20 the copyrights and trademarks to the Net 21 Ware, except for the UNIX and UNIX Ware 22 trademark, which may be -- have an attribute 23 within that product. That's how I believe 24 that this is to be read. 25 Q You're really reading in a lot</p>	<p style="text-align: right;">Page 108</p> <p>1 1.1B, excluded assets, it says that Net Ware 2 operating system and services are excluded, 3 right? 4 MR. NORMAND: Objection to form. 5 A Yes. 6 Q Why did they need to use the 7 modifier, Net Ware? Wasn't it already -- 8 under your rational, wasn't it already 9 assumed that everything listed here relates 10 to Net Ware or Tuxedo? 11 MR. NORMAND: Objection to form, 12 mischaracterizes his testimony. 13 A That's to clarify it further, 14 but -- I don't want to get into an argument 15 here, but if you look at 4A, it says, Net 16 Ware and other Novell code contained in UNIX 17 Ware 2.01 and higher, this is my position, 18 that there was Net Ware and UNIX Ware, and 19 they were excluding that so that Santa Cruz 20 could not at some point in time claim 21 ownership of Net Ware. That's why they are 22 listing it as excluded. It's my opinion. 23 Q Why would it be, in your 24 opinion, listed expressly as a modifier in 25 Roman 2, but not listed explicitly on the</p>
<p style="text-align: right;">Page 107</p> <p>1 here. 2 MR. NORMAND: Objection to form. 3 Q This schedule 1.1B in numerous 4 places contains the modifier, Net Ware or 5 Tuxedo, the parties knew how to spell it out 6 when they wanted to. 7 MR. NORMAND: Is this a question? 8 Q And yet you believe they 9 intended modifiers for Tuxedo and Net Ware on 10 the intellectual property, but just didn't 11 put it in there? 12 MR. NORMAND: Objection to form, 13 argumentative, asked and answered, lack 14 of foundation, mischaracterizes his 15 previous testimony. 16 Q Is that what you're saying? 17 A I stated my opinion. I can see no 18 reason why the copyrights for UNIX or UNIX 19 Ware would have been excluded in the sale of 20 the assets to Santa Cruz, and that's 21 supported by other information, other 22 agreements between Novell and Santa Cruz that 23 I reviewed. 24 Q So, let me just make sure I 25 have it right. Look at Roman 2 on schedule</p>	<p style="text-align: right;">Page 109</p> <p>1 copyrights or the patents? 2 A I don't know. 3 MR. NORMAND: Objection to form. 4 Q Isn't it possible if they 5 didn't include a modifier, they didn't intend 6 the modifier? 7 MR. NORMAND: Objection to form. 8 A I can't believe that. 9 Q Why not? 10 A One reason is if Novell retained 11 the copyrights and ownership of UNIX, as they 12 are claiming, why at the time when they 13 signed the asset purchase agreement did they 14 sign a technology license agreement with 15 Santa Cruz, which gave them very limited 16 rights to use UNIX source code internally, 17 only internally, with also very strict 18 requirements and limitations on their 19 distribution of any use of that source code 20 in binary form? 21 If in fact Novell owned the UNIX, 22 didn't transfer the copyright and still owned 23 UNIX, there would be no reason for them to 24 take a license for the product. 25 Q Can you point me to anywhere</p>

EXHIBIT 17

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Attorneys for The SCO Group, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

<p>THE SCO GROUP, INC.</p> <p>Plaintiff/Counterclaim-Defendant,</p> <p>v.</p> <p>INTERNATIONAL BUSINESS MACHINES CORPORATION,</p> <p>Defendant/Counterclaim-Plaintiff.</p>	<p>DECLARATION OF DOUG MICHELS</p> <p>Case No. 2:03CV-0294DAK Honorable Dale A. Kimball Magistrate Judge Brooke C. Wells</p>
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I, Doug Michels, declare as follows:

1. I submit this declaration in connection with The SCO Group, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003), and The SCO Group v. Novell, Inc., Civil Action No. 2:04CV00139 DAK (D. Utah 2004). I make this declaration based upon personal knowledge.

Career at Santa Cruz

2. I co-founded The Santa Cruz Operation, Inc. ("Santa Cruz") with my father in 1978, and was then employed with the company in various executive management positions.
3. I was the President and Chief Executive Officer of Santa Cruz from April 1998 until May 2001, when Caldera International, Inc. ("Caldera") acquired certain divisions of Santa Cruz. Santa Cruz then changed its name to Tarantella, Inc., where I stayed on as President and Chief Executive Officer until 2003.
4. As the President and CEO of Santa Cruz, I became familiar with Santa Cruz's UNIX System V license agreements after we acquired the UNIX business and assets, including the UNIX copyrights, from Novell in 1995.
5. I have reviewed the declarations of former Santa Cruz employees Jim Wilt and Kim Madsen and agree with their explanation of the transaction with Novell and other issues.

Santa Cruz's Rights Under the System V License Agreement

6. Santa Cruz was itself a UNIX System V licensee prior to its acquisition of the UNIX business and copyrights from Novell. As a UNIX System V licensee, Santa Cruz understood it was obligated to keep confidential all parts of System V software, including modifications and derivative works, and including the methods and concepts therein.



After Santa Cruz obtained the UNIX business and assets from Novell, Santa Cruz viewed the agreements the same way and informed our customers of those confidentiality obligations.

7. I understand that others, including David McCrabb, may have offered less restrictive interpretations of the UNIX System V licenses than I have set forth above. To the extent those interpretations are at odds with the explanation given above, they are at odds with company practice and policy. I have reviewed the Declaration of Kim Madsen, who was Santa Cruz's Manager of Law and Corporate affairs, on this point and I agree with her explanation of the UNIX System V licenses. It was our policy and practice that the sales organization defer to the legal department on issues such as this.
8. The employees at Santa Cruz who had the most experience in interpreting and enforcing the UNIX System V license agreements were the members of the UNIX licensing group that had been part of UNIX Systems Labs ("USL") and Novell. The management of Santa Cruz relied to a great extent on the experience and views of such individuals which was consistent with the description set forth above.
9. In connection with the 1995 purchase from Novell, the parties agreed that (as is accurately explained by both Mr. Wilt and Ms. Madsen) Novell could retain the existing binary royalty stream even though the entire UNIX business, source code and related assets, including copyrights, were transferred to Santa Cruz. There was no intent to grant Novell any right to waive or to direct or require SCO to waive, any of its intellectual property rights or protections contained in the UNIX licenses.



10. After 1995, Santa Cruz's business with respect to the UNIX System V source code license agreements consisted primarily in collecting binary royalties attributable to sublicensed object code product. At the same time, the UNIX System V software included substantial intellectual property that Santa Cruz was using in later versions of its UNIX and UnixWare products. Accordingly, Santa Cruz had a strong continuing interest in protecting that property under the existing UNIX System V license agreements.

IBM's System V License Buyout

11. In early 1996, Novell, and IBM attempted to negotiate an agreement whereby Novell would be paid a buy-out settlement from IBM's obligation of paying binary royalties pursuant to its UNIX licenses. Novell even signed the agreement "on behalf of" Santa Cruz without authority to do so. Santa Cruz believed this unilateral action by Novell was contrary to SCO's rights under the APA. We notified Novell of our belief that their actions had breached our agreement with them and that we intended to aggressively pursue all available remedies under the agreement. After protracted discussion, correspondence and negotiation a settlement agreement was reached between Santa Cruz and Novell and Santa Cruz, Novell and IBM agreed to a modified Amendment No. X additionally, it was agreed Santa Cruz would receive a payment for this buy-out. It was my understanding that all parties clearly understood that the Amendment did not negatively impact our rights under the APA, and the related UNIX licenses, including our core source code rights.

12. No one ever expressed the view to me that Amendment No. X precluded Santa Cruz from terminating IBM's UNIX source code or sublicensing agreements in the event of a



breach. I would not have agreed to the terms of Amendment X if it had been explained to me that way. I also agree with Ms. Madsen's statements on this point.

Project Monterey

13. I supported and helped to negotiate Santa Cruz's work with IBM in Project Monterey in 1998, and I oversaw the progress of the work during my tenure at Santa Cruz. I thought that Project Monterey represented a valuable opportunity for both companies.
14. One of the principal components of Project Monterey was that Santa Cruz and IBM would work together as partners in the joint development and general commercial release of a product designed for use on a prospective Intel 64-bit chip.
15. In conjunction with the foregoing principal component of the Project, IBM would have the right to use Santa Cruz's UnixWare/SVr4 code in IBM's AIX for Power product, but the propriety of IBM's use of that code was inextricably linked to the release of a commercially viable joint product for use on the Intel 64-bit chip.
16. I am told that as early as October 2000, IBM had released a version of AIX for Power with hundreds of thousands of lines of UnixWare/SVr4 source code which I did not know at the time. At the same time, Santa Cruz was focused on moving the project forward and was looking forward to the release of the joint products as contemplated by the agreement between the IBM and Santa Cruz and we believed IBM was pursuing the same goal at that time.
17. Santa Cruz believed during the course of Project Monterey that IBM was serious about the joint development of a general commercial release of the joint product for use on the Intel 64-bit chip, and relied on IBM's repeated representations of its commitment to the



Project. I specifically recall a meeting with IBM executives, including Ron Lauderdale, in the summer of 2000 in which I asked IBM to confirm that it was not focusing on Linux at the expense of Project Monterey, and in which IBM assured me that they were pursuing Project Monterey vigorously. During the course of Project Monterey, IBM consistently maintained this position.

18. IBM also strenuously maintained that its support of Linux through the project known as Trillian (to port Linux to IA-64) in no way impacted their support of Project Monterey and that the free operating systems needed to support some IBM database products would not be a significant factor in the enterprise or high-end server markets where we were well positioned. We accepted IBM's assertions on this point.



Santa Cruz's View of Linux

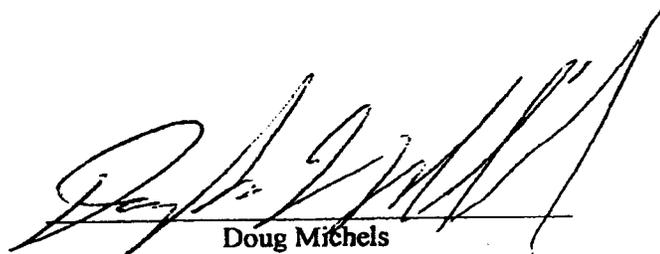
19. In mid to late 1999, because the Linux system was beginning to encroach into some small business uses and major players in the computer industry, including IBM, had announced support for Linux, Santa Cruz considered and preliminarily investigated the possibility that UNIX System V source code had been incorporated into Linux without authorization. Although this preliminary investigation indicated that there were some potential and suspicious problems with Linux, we concluded that it was not then in Santa Cruz's interests to undertake an exhaustive and expensive investigation of the issue. Santa Cruz did not undertake to analyze, for example, whether any version of Linux constituted a derivative work of any version of UNIX System V within the meaning of the copyright laws.
20. One of the key premises of Project Monterey, as representatives of IBM repeatedly confirmed to me, was that the parties were to create a family of UNIX-based products that would provide revenues to benefit both parties in the market for UNIX on the Intel architecture chips, including the 64-bit chip.
21. The intent of the Joint Development Agreement, as confirmed by IBM's representations, was that (among other things) the parties would jointly develop an IA-64 product and each receive royalties from the sales of that product; that the commercial release of the IA-64 product would permit IBM to use SCO's UnixWare source code for use in IBM's existing AIX operating system; and that IBM would permit SCO to use AIX source code to develop SCO's UnixWare product.

22. When I and others at Santa Cruz informed IBM that Santa Cruz was concerned about IBM's announced support for Linux and how that might impact Project Monterey, IBM's response was to emphasize that Linux was not being supported by IBM as a commercially hardened operating system and would not substantially encroach on Santa Cruz's core markets or the markets targeted by Project Monterey, and that we need not worry about it.

23. By 1999, systems based on Intel processors and designed for corporate server environments had become more competitive with proprietary RISC based systems. With both Project Monterey products and Santa Cruz's other offerings, Santa Cruz was well positioned to obtain greater penetration into this market.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

November 9, 2006



Doug Michels

EXHIBIT 18

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff and
Counterclaim Defendant,

vs.

C.A. No. 2:04CV00139

NOVELL, INC.,

Defendant and
Counterclaim Plaintiff.

_____ /

Deposition of
DOUGLAS MICHELS
March 28, 2007

Reported by
Katherine E. Lauster
CSR 1894

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Page 98	<p>12:10:18 1 A. I doubt it. I was CTO. I mean, could 12:10:21 2 the CEO sign off on it without asking me, legally? 12:10:24 3 I suspect. 12:10:25 4 Q. So as a general matter of practice, was 12:10:28 5 your agreement necessary to execute something like 12:10:30 6 Amendment Number X? 12:10:32 7 A. Alok and I had a very close relationship, 12:10:37 8 and I had a deeper understanding of these issues 12:10:40 9 than he did, so he tended to rely on my opinion, 12:10:44 10 and I was on the Board. You know, I mean, I had 12:10:46 11 a -- I had a strong say. Whether it was 12:10:50 12 technically necessary, I doubt it. 12:10:53 13 Q. All right. And to clarify, at the 12:10:54 14 time -- I think you just said this, but let me be 12:10:57 15 sure. We're now in sort of mid '96. You're still, 12:11:02 16 as far as you recall, CTO of -- 12:11:06 17 A. And EV-P. 12:11:09 18 Q. And EV-P? 12:11:14 19 A. That's right. 12:11:14 20 THE REPORTER: "NEV-P"? 12:11:16 21 MR. MELAUGH: Executive Vice-President. 12:11:17 22 BY MR. MELAUGH: 12:11:17 23 Q. Correct? 12:11:17 24 A. Correct. 12:11:17 25 MR. NORMAND: And EV-P. And, not NEV-P.</p>	Page 100	<p>12:12:22 1 the Novell suit? Yes. 12:12:24 2 BY MR. MELAUGH: 12:12:25 3 Q. And his bills are being paid by SCO? 12:12:29 4 A. I believe so. 12:12:30 5 Q. Not by you? 12:12:31 6 A. Not by me. 12:12:36 7 MR. MELAUGH: If we could take another 12:12:37 8 short break, I actually don't think I have a lot -- 12:12:40 9 hell of a lot more. So let me just take a break 12:12:43 10 and look over things. 12:12:46 11 THE WITNESS: Okay. 12:12:46 12 MR. MELAUGH: And then we'll come back. 12:12:48 13 THE VIDEOGRAPHER: Going off the record. 12:12:49 14 The time is 12:12 p.m. 12:15:54 15 (Short break.) 12:15:56 16 THE VIDEOGRAPHER: Back on the record. 12:15:57 17 The time is 12:15 p.m. And this marks the end of 12:16:02 18 tape number 1 in the deposition of Douglas Michels. 12:16:06 19 Going off the record. The time is 12:15 p.m. 12:16:10 20 (Short break.) 12:24:19 21 THE VIDEOGRAPHER: Back on the record. 12:24:21 22 Here marks the beginning of tape number 2 in the 12:24:23 23 deposition of Douglas Michels. The time is 12:24:25 24 12:24 p.m. 12:24:25 25 //</p>
Page 99	<p>12:11:21 1 THE REPORTER: It's really helpful if you 12:11:23 2 don't speak at the same time. 12:11:25 3 THE WITNESS: I apologize. 12:11:27 4 MR. MELAUGH: We'll try. 12:11:29 5 THE WITNESS: We just get excited. It's 12:11:32 6 so exciting. 12:11:34 7 BY MR. MELAUGH: 12:11:34 8 Q. How much stock do you currently own? 12:11:37 9 SCO? 12:11:38 10 A. Zero. 12:11:38 11 Q. Do you have any retained options to buy 12:11:41 12 stock? 12:11:42 13 A. No. 12:11:45 14 Q. Have you been promised any compensation 12:11:48 15 in connection with your testimony in this dispute? 12:11:53 16 A. Ryan buy dinner? 12:11:58 17 Q. Aside from Ryan's generosity as regards 12:12:01 18 dinner, have you been provided any compensation? 12:12:06 19 A. All the generosity I've seen. 12:12:09 20 Q. I take it the answer is no? 12:12:12 21 A. No. 12:12:12 22 Q. And Mr. Normand currently represents you, 12:12:16 23 I take it, in connection with this dispute? 12:12:19 24 MR. NORMAND: Objection to form. 12:12:21 25 THE WITNESS: In connection with this --</p>	Page 101	<p>12:24:29 1 BY MR. MELAUGH: 12:24:31 2 Q. In 2001 SCO sold certain assets to 12:24:37 3 Caldera and changed its name to Tarantella; is that 12:24:41 4 right? 12:24:41 5 A. Correct. 12:24:41 6 Q. And you continued on with Tarantella? 12:24:44 7 A. Correct. 12:24:45 8 Q. As part of that transaction, did you 12:24:47 9 receive change of control benefits? 12:24:49 10 A. I did. 12:24:50 11 MR. MELAUGH: That's my last question. 12:24:53 12 Do you have any? 12:24:55 13 MR. NORMAND: I do have some questions. 12:24:56 14 EXAMINATION BY MR. NORMAND 12:25:02 15 Q. Good morning, Mr. Michels. 12:25:03 16 A. Good morning. 12:25:04 17 Q. Did you play any role in connection with 12:25:06 18 the 2001 asset transfer from Santa Cruz to Caldera? 12:25:11 19 A. I did. 12:25:11 20 Q. What role did you play? 12:25:14 21 A. The original creator and negotiator for 12:25:18 22 that deal. 12:25:18 23 Q. And can you describe for me your general 12:25:20 24 intent with respect to the transaction? 12:25:29 25 A. Yeah. I think the -- the general intent</p>

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<p>12:25:31 1 was to sell the UNIX business to -- to Caldera. 12:25:36 2 Q. Was the intent to sell the same UNIX 12:25:38 3 assets you had acquired from Novell in 1995? 12:25:42 4 A. Well, they were included in the UNIX 12:25:44 5 business, yeah. They were a small part of it. 12:25:53 6 Q. What was the larger part of the business? 12:25:55 7 A. The OpenServer business. 12:26:02 8 Q. You testified this morning that one of 12:26:05 9 the purposes of the APA was to buy the original 12:26:08 10 UNIX business. Do you recall that? 12:26:10 11 A. Yes. 12:26:13 12 Q. Was one of the purposes of the APA to buy 12:26:16 13 the UnixWare business as well? 12:26:19 14 A. Yeah, what I meant was the -- the intent 12:26:21 15 was to buy the business that had originally started 12:26:24 16 at AT&T and Bell Labs, and then became USL, and 12:26:29 17 then was acquired by Novell, and then -- and that 12:26:31 18 -- and that whole business is also what created 12:26:35 19 UnixWare, but I mean we bought the employees and 12:26:37 20 the body of that business, which is -- included 12:26:40 21 everything they ever did, which obviously included 12:26:44 22 UnixWare as well as SVR IV and SVR III and SVR V. 12:26:51 23 Q. Mr. Melaugh asked you this morning about 12:26:53 24 the Technology License Agreement or TLA. Do you 12:26:57 25 remember that question, or those series of</p>	<p>12:28:06 1 of UNIX inside of their existing products. 12:28:09 2 Q. And did you have an understanding at the 12:28:10 3 time as to the basis on which Santa Cruz granted 12:28:15 4 Novell rights to the UNIX technology? 12:28:18 5 A. "The basis"? What do you mean? 12:28:20 6 Q. Was it your view that Santa Cruz owned 12:28:24 7 the rights and the UNIX technology as of the date 12:28:28 8 of the license back to Novell? 12:28:29 9 A. Of course. We bought the business. And 12:28:32 10 as a result of buying the business, we owned all 12:28:34 11 the intellectual property. And they were concerned 12:28:37 12 that, since we owned all the intellectual property, 12:28:41 13 we might turn around and sue them for using our 12:28:45 14 intellectual property in -- in Netware, and of 12:28:46 15 course they didn't know if they actually had used 12:28:49 16 it in Netware, but they thought they might have, 12:28:52 17 maybe accidentally, since the same engineers worked 12:28:54 18 on both. 12:28:55 19 And, you know, obviously we weren't suing 12:28:56 20 them over that, so we granted them a license to 12:28:59 21 cover that eventuality, in case it had happened. 12:29:08 22 Q. Did you have an understanding at the time 12:29:11 23 of the license back as to the scope of the 12:29:15 24 restrictions on Novell's ability to compete with 12:29:19 25 Santa Cruz using the license back technology?</p>
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<p>12:27:00 1 questions? 12:27:00 2 A. Where he was talking about different 12:27:01 3 piles of paper? 12:27:02 4 Q. I think you were both talking about that, 12:27:05 5 yes. 12:27:05 6 A. Uh-huh. 12:27:06 7 Q. Do you recall independently of how it was 12:27:08 8 embodied in a particular agreement, do you recall 12:27:11 9 the issue of a license back to Novell -- 12:27:14 10 A. Yes. 12:27:15 11 Q. -- in connection with the APA? 12:27:16 12 A. Yes. Novell had a concern that, during 12:27:19 13 the course of time where they had commingled the 12:27:22 14 UNIX and Novell Development efforts, that some UNIX 12:27:26 15 may have crept into Netware, and they wanted to 12:27:29 16 make sure that any incidental technology that had 12:27:34 17 crept into Netware from UNIX was not a violation of 12:27:37 18 anything. 12:27:37 19 And we, of course, were fine with that, 12:27:39 20 but we wanted to make sure that that license didn't 12:27:42 21 give them any rights to go back into the UNIX 12:27:45 22 business, or to use that technology, other than had 12:27:47 23 incidentally perhaps crept in. And so we -- we did 12:27:55 24 effectively grant them rights to UNIX technology as 12:28:00 25 necessary to protect them from any incidental use</p>	<p>12:29:23 1 A. Well, I mean, our purpose was only to 12:29:26 2 give them rights to any incidental use of the 12:29:34 3 technology in their -- in their Netware product 12:29:40 4 family. 12:29:43 5 THE REPORTER: -- "in their Netware 12:29:43 6 product" -- 12:29:43 7 THE WITNESS: In their Netware product 12:29:43 8 family, and we wanted to be certain that, you know, 12:29:46 9 we didn't accidentally give them rights to -- to, 12:29:49 10 you know, suddenly say, you know, we didn't really 12:29:53 11 sell the business. We're still selling UNIX. 12:29:56 12 So we had a non-compete provision in 12:29:58 13 there that said they couldn't -- you know, they 12:30:01 14 couldn't use this technology. We weren't licensing 12:30:06 15 them to compete with us other than through Netware, 12:30:08 16 but I don't -- I don't know how the exact wording 12:30:12 17 got implemented, but that was the purpose. 12:30:14 18 BY MR. NORMAND: 12:30:14 19 Q. Now, Exhibit 241 is your November 2006 12:30:18 20 declaration, Mr. Michels. 12:30:21 21 A. Oh, this? 12:30:25 22 Q. I think you testified, in response to 12:30:26 23 Mr. Melaugh's questions this morning, that you had 12:30:29 24 occasion to potentially send drafts of this 12:30:33 25 declaration to some former co-workers at Santa</p>

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13:00:03 1 just the intent then, the intent was not -- part of
 13:00:06 2 the intent -- the intent did not include a license
 13:00:11 3 to SCO's efforts going forward?
 13:00:14 4 A. Correct.
 13:00:26 5 Q. The questions went by a little quickly.
 13:00:28 6 I -- I -- I do want to make sure I heard the
 13:00:30 7 answer.
 13:00:30 8 When you were shown Exhibit 1009, which
 13:00:34 9 is Amendment Number 2, you said you did not
 13:00:36 10 recognize this document initially?
 13:00:38 11 A. Looks like a piece of paper with words on
 13:00:40 12 it.
 13:00:41 13 Q. So it's not something that you reviewed
 13:00:43 14 in preparation for your declaration or for this
 13:00:46 15 deposition testimony?
 13:00:47 16 A. I think it might have flown by while we
 13:00:51 17 were talking at dinner about this testimony, but --
 13:00:54 18 and it wasn't something we spent much time on.
 13:00:57 19 Q. So were there documents exchanged during
 13:01:00 20 the dinner you had?
 13:01:01 21 A. Exchanged? No. We looked at some.
 13:01:03 22 Q. What documents did you look at?
 13:01:07 23 MR. NORMAND: What are we talking about
 13:01:09 24 right now? What dinner?
 13:01:09 25 //

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13:01:10 1 BY MR. MELAUGH:
 13:01:10 2 Q. That's a -- we'll treat that as a
 13:01:11 3 question from me. What dinner are we talking
 13:01:14 4 about?
 13:01:15 5 A. The dinner last night, that I had last
 13:01:16 6 with him.
 13:01:18 7 MR. NORMAND: Well, that's at a point
 13:01:18 8 when we were representing Mr. Michels, so you need
 13:01:19 9 to craft your questions more carefully about what
 13:01:22 10 documents he reviewed.
 13:01:24 11 BY MR. MELAUGH:
 13:01:25 12 Q. What documents did you review at the
 13:01:27 13 dinner last night?
 13:01:28 14 MR. NORMAND: I'm going to instruct the
 13:01:30 15 witness not to answer the question.
 13:01:31 16 BY MR. MELAUGH:
 13:01:32 17 Q. Did you review any documents that
 13:01:34 18 refreshed your recollection about the issues in
 13:01:36 19 this case last night?
 13:01:45 20 A. I would not say they refreshed my
 13:01:47 21 recollection, because I never studied the documents
 13:01:50 22 before.
 13:01:54 23 Q. Okay. Apart from the dinner last night,
 13:02:00 24 have you reviewed any documents at the request of
 13:02:04 25 Mr. Normand, or Mr. Tibbitts, or any other SCO

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13:02:08 1 employees, apart from the drafts of your
 13:02:11 2 declaration?
 13:02:12 3 MR. NORMAND: You can answer the question
 13:02:13 4 yes or no.
 13:02:15 5 THE WITNESS: I did not review any
 13:02:16 6 documents at their request, no.
 13:02:18 7 BY MR. MELAUGH:
 13:02:53 8 Q. So I understand, I think you answered a
 13:02:55 9 similar question from Mr. Normand, but I just want
 13:02:57 10 to understand your testimony on this point.
 13:03:00 11 Is it your opinion that -- just a moment.
 13:03:08 12 A. Take your time.
 13:03:17 13 Q. So turning to Amendment Number 2 here,
 13:03:19 14 Mr. Normand read you some text from this under
 13:03:23 15 paragraph A. I'll read it again, so we're all on
 13:03:26 16 the same page. It modifies the excluded assets to
 13:03:30 17 read:
 13:03:30 18 All copyrights and trademarks, except for
 13:03:33 19 the copyrights and trademarks owned by
 13:03:36 20 Novell as of the date of the Agreement
 13:03:37 21 required for SCO to exercise its rights
 13:03:40 22 with respect to the acquisition of UNIX
 13:03:42 23 and UnixWare technologies.
 13:03:46 24 What is your opinion as to the scope of that
 13:03:48 25 phrase, namely, "copyrights required for SCO to

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13:03:52 1 exercise its rights," and so on? What copyrights
 13:03:56 2 does that include?
 13:03:57 3 MR. NORMAND: Objection to form, and
 13:03:58 4 asked and answered.
 13:04:24 5 THE WITNESS: I mean, I believe the scope
 13:04:26 6 of the term here is all copyrights relating to the
 13:04:39 7 UNIX business -- source code, documentation,
 13:04:42 8 screens, you know, training materials, you know,
 13:04:50 9 that -- brochures, marketing literature -- every --
 13:04:54 10 you know, there's millions of copyright things in a
 13:04:58 11 business.
 13:04:59 12 BY MR. MELAUGH:
 13:05:00 13 Q. Were there any copyrights held by Novell
 13:05:03 14 that -- that you believe were excluded from this --
 13:05:05 15 from the scope of this phrase?
 13:05:08 16 A. Netware.
 13:05:10 17 Q. Aside from the Netware copyrights, are
 13:05:12 18 there any copyrights --
 13:05:14 19 A. All of the things not related to the UNIX
 13:05:17 20 business -- Netware, all Novell's other products
 13:05:20 21 that we weren't buying, all their documentation,
 13:05:23 22 marketing materials, training materials for their
 13:05:26 23 products. I mean, we were only buying the UNIX
 13:05:29 24 business.
 13:05:29 25 Q. Are there any copyrights that related in

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<p>13:05:31 1 any way to UNIX or UnixWare that you believe are 13:05:34 2 excluded from the scope of this phrase? 13:05:37 3 MR. NORMAND: Objection to form. 13:05:39 4 THE WITNESS: I -- I mean, the only 13:05:41 5 copyrights would be, you know, like how to hook up 13:05:44 6 your Netware server to Unix. I mean -- you know, I 13:05:48 7 mean, I'm sure there were documents that were in 13:05:51 8 the Netware pile that discussed Unix, but anything 13:05:54 9 that's in the -- in the UNIX business would have 13:05:57 10 been included. 13:05:57 11 BY MR. MELAUGH: 13:05:58 12 Q. Why are all those copyrights required for 13:06:01 13 SCO to exercise its rights with respect to the 13:06:04 14 acquisition? 13:06:06 15 A. We took over -- 13:06:07 16 MR. NORMAND: Objection. Asked and 13:06:07 17 answered. 13:06:08 18 THE WITNESS: We took over the business. 13:06:09 19 We were in the business of selling intellectual 13:06:13 20 property. We were in the business of supporting 13:06:15 21 the intellectual property. We were in the business 13:06:19 22 of providing training. We were in the business of 13:06:21 23 providing marketing materials. We couldn't do any 13:06:23 24 of that without owning the copyrights. 13:06:25 25 Q. Well, let's take SVRX licenses, for</p>	<p>13:07:33 1 for example, listed -- for the older versions of -- 13:07:40 2 of -- of SVRX? 13:07:43 3 A. OpenServer is one of the oldest, but I'm 13:07:47 4 not sure what distinction you're making. 13:07:50 5 Q. Well, I'm trying to determine the scope 13:07:52 6 of the -- of the licenses that SCO had to turn over 13:07:57 7 revenue to Novell from. What is the scope of those 13:08:03 8 licenses? 13:08:05 9 MR. NORMAND: Objection to form. Asked 13:08:05 10 and answered. 13:08:10 11 THE WITNESS: Now, there was a specific 13:08:12 12 list of revenue streams from specific customers 13:08:15 13 that constituted the residual royalties, and there 13:08:19 14 were many documents that went back and forth 13:08:21 15 itemizing what revenue streams were on that list. 13:08:24 16 I mean -- I mean, it was a very clear 13:08:30 17 thing. I mean, I don't know the -- I couldn't 13:08:32 18 enumerate it for you, but -- but there was never 13:08:36 19 really any ambiguity about what was on the list. 13:08:38 20 BY MR. MELAUGH: 13:08:38 21 Q. Okay. Let's take a look at Exhibit 13:08:41 22 Number 1 again. This is the Asset Purchase 13:08:45 23 Agreement, the large document. Could you turn -- 13:08:47 24 it's about three-quarters of a way through, to page 13:08:52 25 -9 -- the last three digits are -952.</p>
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<p>13:06:30 1 example. Was SCO, at the time, in the business of 13:06:33 2 entering into new SVRX binary resource -- 13:06:39 3 A. Yes. 13:06:39 4 Q. -- licenses? 13:06:41 5 MR. NORMAND: Objection to form. 13:06:41 6 BY MR. MELAUGH: 13:06:42 7 Q. Both binary and resource licenses? 13:06:42 8 A. Yes. If somebody wanted one, we were the 13:06:45 9 place they would have got it. OpenServer was an 13:06:52 10 SVRX license, and we were -- that was still our 13:06:54 11 primary product. So we were still selling source 13:06:58 12 and binary rights to OpenServer. It was all based 13:07:02 13 on SVRX licenses. 13:07:04 14 Q. But for SVRX binary licenses at least, 13:07:07 15 SCO owed an obligation to Novell to turn over 13:07:12 16 revenue from those licenses; isn't that right? 13:07:15 17 MR. NORMAND: Objection to form. 13:07:16 18 THE WITNESS: I'm sorry? 13:07:16 19 BY MR. MELAUGH: 13:07:17 20 Q. For binary SVRX licenses, SCO -- 13:07:21 21 A. That's an OpenServer. 13:07:23 22 Q. I'm talking about SVRX. 13:07:25 23 A. But OpenServer is SVRX. 13:07:27 24 Q. For the SVRX -- what's -- then for the 13:07:29 25 older versions of -- of UNIX, the ones that are,</p>	<p>13:08:59 1 A. Have I got the same -- okay. 13:09:03 2 Q. And looking at item number VI, V-I, at 13:09:09 3 the bottom of this page, and it continues onto the 13:09:11 4 next page, so it begins: 13:09:14 5 All contracts relating to the SVRX 13:09:17 6 Licences listed below: 13:09:19 7 and then it lists a series of software, basically. 13:09:21 8 Is this the list you're referring to? 13:09:24 9 MR. NORMAND: Objection to form. 13:09:26 10 THE WITNESS: I don't know what this is a 13:09:27 11 list of. 13:09:28 12 BY MR. MELAUGH: 13:09:29 13 Q. So what list were you referring to? You 13:09:31 14 said there's a -- a list of software for -- 13:09:35 15 A. There was a list of specific customers 13:09:39 16 who had binary license agreements for which we 13:09:42 17 continued to pay 95 percent of the royalties to 13:09:46 18 Novell. And I don't know if the list is in the 13:09:49 19 contract or not. I don't know where it is. I know 13:09:52 20 there was -- 13:09:53 21 I mean, our royalty payment people knew 13:09:55 22 which -- which royalties they got their share of. 13:09:58 23 There was clearly a documented list that everybody 13:10:00 24 had signed off on. Where it was in the stack of 13:10:03 25 paper, I have no idea.</p>

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EXHIBIT 19

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP,	)	Case No. 2:03CV0294DAK
)	
Plaintiff,	)	Hon. Dale A. Kimball
	)	Magistrate Judge Brooke C. Wells
v.)	
)	
INTERNATIONAL BUSINESS	)	DECLARATION OF JIM WILT
MACHINES CORPORATION,)	
)	
Defendant.)	
)	

I. JIM WILT, declare as follows:

1. I submit this Declaration in connection with the lawsuits entitled *The SCO Group v. IBM* and *The SCO Group v. Novell, Inc.*

I. EDUCATIONAL BACKGROUND

2. I received a Bachelor's Degree in Mathematics from Case Western Reserve University in 1966, and a Master's Degree in Computer Science from the University of Wisconsin in 1967. In 1968 I completed my course work towards a PhD in Computer Science at the University of Wisconsin.

II. WORK HISTORY

3. After leaving the University of Wisconsin, I worked as a software systems programmer and instructor at Vanderbilt University for a year. In 1969, I joined Xerox Corporation and worked for them (and subsequently Honeywell when they purchased Xerox's computer business) for nine years. My positions at Xerox/Honeywell included field systems analyst, systems analyst manager, and software product manager. In 1978, I joined Amdahl Corporation and worked in their software product planning department. After I left Amdahl, I did consulting to provide computer and business advice to smaller companies.
4. In 1983, I joined The Santa Cruz Operation, Inc. ("SCO"). Initially I worked in the marketing department and subsequently became the Vice President Marketing and Sales. While in that position I moved to the UK and opened SCO's European Office. I was based in Europe for five years. In 1989, I became the Vice President of Corporate Development, which included responsibility for mergers and acquisitions. While in that position I was responsible for acquiring two companies, and the UNIX



intellectual property and UnixWare product business. I became the Senior Vice President Products in 1998 and was responsible for all product software development, product management and product support. In 2000, I became the President of the Professional Services Business Unit. I worked at SCO through May 2001, when Caldera acquired the Server Software and Professional Services Business Units.

III. NOVELL'S SALE OF UNIX TO SCO

5. In 1995, Novell, Inc. ("Novell"), through Mike DeFazio and Ed Chatlos, approached SCO about the possibility of selling Novell's entire UNIX and UnixWare business.
6. Doug Michels (SCO's Chief Executive Officer), Geoff Seabrook (an Executive Vice President), and I met with representatives of Novell. During the discussions, SCO made clear to Novell that SCO could not afford a direct purchase of the complete UNIX and UnixWare business, in light of the price being asked for the entire business. Mr. Michels proposed the idea of reducing the proposed purchase price by permitting Novell to retain certain binary royalty payments under certain UNIX licenses.
7. Mr. Seabrook and I were assigned the responsibility of negotiating and completing a deal with Novell along those lines. Mr. Seabrook and I thereafter became the lead negotiators for SCO and oversaw the day-to-day responsibility for the potential purchase. During the negotiations, I met regularly with Novell representatives, sometimes several times a week, from approximately August to September 1995. I



met primarily with Ed Chatlos of Novell during those negotiations. I understood Mr. Chatlos to be Novell's chief negotiator during the negotiations.

8. It was my understanding and intent during those negotiations that SCO would acquire Novell's entire UNIX and UnixWare business including the copyrights. I do not recall, and do not believe that there ever was, any instance in which anyone at SCO or Novell ever stated or exhibited any contrary intent or understanding, to me or anyone else.
9. As a result of those negotiations, Novell and SCO entered into the Asset Purchase Agreement ("APA") dated as of September 19, 1995, through which Novell received shares of SCO common stock and other consideration, and received rights to certain binary product royalty payments to be collected by SCO. SCO acquired all right, title, and interest in and to the UNIX and UnixWare business, operating system, and source code. It was my intent on behalf of SCO to acquire through the APA Novell's entire UNIX and UnixWare business, including the UNIX and UnixWare source code and all associated copyrights, and I believed then (as now) that Novell's intent was to sell all of those assets and rights.
10. Paragraph 4.16 of the APA pertains to the binary royalty income stream that Novell retained through the APA. The parties agreed to the language in Paragraph 4.16(b) in order to allow Novell to manage that royalty stream within the operation of SCO's customer source code licenses – not at the expense of SCO's right to enforce its intellectual property protections under any such licenses, and not to permit Novell to waive any of those protections. I have reviewed Amendment No. 2 to the APA and believe that the language therein confirms that intent. In light of my intent, and



based on my understanding of the parties' intent, I do not believe that Novell had or has any right to waive, or to direct or require SCO to waive, any of its intellectual property rights or protections.

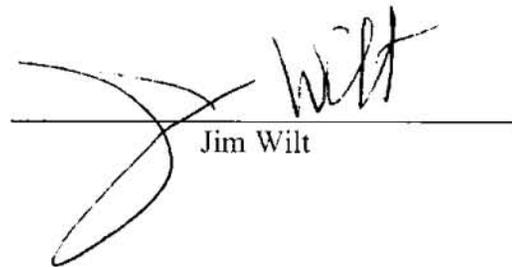
11. By the time of the APA closing, SCO's business plan did not contemplate any significant additional sales of SVRX source-code licenses. The remaining interest in that particular part of the UNIX business consisted primarily in collecting binary royalties attributable to sublicensed object-code product. However, because the SVRX software included substantial intellectual property that SCO was using in later versions of its UNIX and UnixWare products, SCO had a strong continuing interest in protecting that property under the existing SVRX licenses.
12. I do not recall anyone on either side of the negotiations or transaction ever suggesting that Novell would retain any copyright relating to UNIX or UnixWare. I am not aware of any discussions, whether general or specific, during the negotiations that contradict my understanding of the transaction as set forth in this Declaration. None of my superiors at SCO or Mr. Seabrook ever even suggested that SCO was not acquiring the UNIX or UnixWare copyrights, nor did Novell ever communicate to me that it was not selling the UNIX or UnixWare copyrights.
13. At the time the transaction was signed and closed, I did not observe anyone at SCO or Novell stating or acting as if Novell had retained any UNIX or UnixWare copyrights. Any such statement or conduct would have been contrary to the intent and structure of the deal as I understood it and communicated it to Novell and within SCO. It has been my understanding and belief since the time the APA closed that

A handwritten signature in black ink, appearing to be 'JAW', is located in the bottom right corner of the page.

Novell sold the UNIX and UnixWare copyrights to SCO as of the time of the closing in 1995.

14. In light of my central role for SCO in negotiations, I believe I would have known if the parties had agreed or ever discussed the possibility that Novell would retain any UNIX or UnixWare copyrights. Indeed, if I had thought that SCO was not acquiring all of the UNIX and UnixWare copyrights, I would not have agreed for SCO to proceed with the deal as priced.
15. I have reviewed Schedule 1.1(b) of the APA (the "Excluded Assets Schedule") with attention to the question of whether Novell was to retain any UNIX or UnixWare copyrights. In my view, Paragraph V.A does not refer, and was not intended to refer, to Novell copyrights relating to UNIX or UnixWare.
16. Pursuant to the APA, the parties also signed a Technology Licensing Agreement in early December 1995, in which Novell licensed source code rights from SCO. In my view, this licensing agreement was consistent with SCO's ownership of the UNIX and UnixWare copyrights following the closing of the APA.
17. I declare under penalty of perjury that the foregoing is true and correct.

Executed: 23 November 2004
Nashville, Tennessee



Jim Wilt

EXHIBIT 20

James Wilt

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., a Delaware)	
corporation,)	
)	
Plaintiff and Counterclaim-)	
Defendant,	)	NO. 2:04CV00139
)	
vs.	)	Judge Dale A.
	)	Kimball
NOVELL, INC., a Delaware)	
corporation,	)	Magistrate Judge
	)	Brook C. Wells
Defendant and Counterclaim-)	
Plaintiff.)	
)	

Videotape deposition of:

JAMES WILT

Taken on behalf of the Defendant
and Counterclaim Plaintiff

January 26, 2007

Reported by: Martha B. Davis, RPR, RDR
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1 Q. Yes, sir.
 2 A. I believe this was modified by one of the
 3 amendments.
 4 Q. That's true, but my questions right now
 5 concern only this document. Can you and I agree as a
 6 preliminary matter that this page lists, quote, all
 7 copyrights, end quote, as one of the excluded assets?
 8 MR. NORMAND: Objection to form.
 9 THE WITNESS: Are you asking me to agree
 10 that that's what the words on the page say?
 11 BY MR. MELAUGH:
 12 Q. Yes, I am.
 13 A. That's what the words on the page say.
 14 Q. Based on that language, can you and I also
 15 agree that if someone with no knowledge about the
 16 background or negotiations of this contract came in and
 17 read this list of excluded assets, they would conclude
 18 that no copyrights were transferred under this
 19 agreement?
 20 MR. NORMAND: Objection to form. In this
 21 hypothetical, has someone read anything other than the
 22 list of excluded assets in the APA?
 23 THE WITNESS: Actually, I can't put
 24 myself in somebody's shoes like that.
 25 BY MR. MELAUGH:

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1 Q. Why is that?
 2 A. Because I know what the agreement was about
 3 and what the intents of the parties were, so what
 4 somebody who had no knowledge of that would have is
 5 something I can't do.
 6 Q. We can agree, though, that the face of this
 7 contract, the language that's written here, excludes
 8 all copyrights from the assets transferred?
 9 A. No, I can only agree that what we did before
 10 is that what -- those are the words that are on this
 11 page. You asked me whether the words under A say all
 12 copyrights and trademarks except for the trademarks
 13 UNIX and UnixWare and, indeed, those are the letters
 14 and words that are on this page.
 15 Q. So, again, the language of this contract
 16 excludes all copyrights from the assets transferred?
 17 A. No, the language of the contract do not
 18 exclude all copyrights and trademarks because the
 19 language of the contract, including its amendments,
 20 clarify and state about what was sold, which is when
 21 you go back to -- I don't know exactly where the
 22 sections are. It talks about selling the UNIX and the
 23 UnixWare business, and then the copyrights and
 24 trademarks relative to the UnixWare business were part
 25 of the assets that were conveyed.

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1 Q. Part of your answer concerned the amendments,
 2 and I am going to ask you about the amendments. Right
 3 now I want to talk only about the documents in front of
 4 you, the Asset Purchase Agreement. Do you understand
 5 that?
 6 A. I understand that. I also understand that
 7 this agreement transfers and sells all the assets of
 8 the UNIX and the UnixWare business. The amendment
 9 clarifies the wording in this contract. It did not add
 10 new business terms.
 11 Q. From the assets of the UNIX and UnixWare
 12 business transferred, though, there are certain assets
 13 that are excluded from transfer in this contract, isn't
 14 that right?
 15 A. Yes, there are.
 16 MR. NORMAND: Objection to form.
 17 THE WITNESS: It did not include the
 18 Empire State Building.
 19 BY MR. MELAUGH:
 20 Q. Did Novell own the Empire State Building at
 21 the time of the contract?
 22 A. I don't know if that was relevant. You asked
 23 if it excluded certain assets and it does.
 24 Q. And one of the assets excluded from transfer
 25 in this contract is, quote, all copyrights, end quote?

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1 A. No.
 2 MR. NORMAND: Objection to form.
 3 THE WITNESS: In this contract, the UNIX
 4 and the UnixWare business and its assets were
 5 transferred to SCO.
 6 BY MR. MELAUGH:
 7 Q. And the contract also lists from within that
 8 category certain assets that are excluded, isn't that
 9 right?
 10 MR. NORMAND: Objection to form.
 11 THE WITNESS: No. Are you saying that
 12 the contract is ambiguous?
 13 BY MR. MELAUGH:
 14 Q. I'm not asking that.
 15 A. No, I'm asking if that's what you're saying,
 16 because that's the interpretation I would get from your
 17 statements. In one place it says that all the assets
 18 of the UNIX and UnixWare business were transferred.
 19 Q. Well, let's take a couple of steps back. The
 20 way I understand this contract is that it sets out a
 21 broad class of assets that are transferred and then it
 22 carves out a portion of those assets that are excluded
 23 from transfer. Do I have -- does my understanding
 24 match --
 25 A. Novell did not transfer their NetWare business

James Wilt

<p style="text-align: right;">Page 30</p> <p>1 to SCO, nor did it transfer the copyrights and 2 trademarks relative to the NetWare business to SCO. 3 Q. Let's focus on my question for a moment. Did 4 I state that accurately? And I'll restate it. 5 A. Restate it, please. 6 Q. Sure. As a general matter, this deal is 7 structured as a transfer of assets, the contract spells 8 out a broad class of assets, and then it spells out a 9 class of assets that are excluded from transfer. Does 10 my understanding of the contract match your 11 understanding of the contract? 12 MR. NORMAND: Objection to form. 13 THE WITNESS: On an extremely high level 14 you could certainly make that statement. You can't 15 draw any conclusions from that statement at that high 16 level. 17 BY MR. MELAUGH: 18 Q. Let's look at page 8 and 9. Again, I'm using 19 the page numbers that Novell has added to this 20 document. If you could read Section 1.1(a) on these 21 two pages to yourself, I'll have a couple of questions 22 for you about that. 23 A. I have read it. 24 Q. So this was what I was talking about a moment 25 ago. This transfers all of seller's right, title and</p>	<p style="text-align: right;">Page 32</p> <p>1 the amendment. I'm just talking about this document. 2 What items in -- 3 A. I'm sorry. I'm having a problem for one 4 understanding why you talk about this contract and not 5 the amendments. 6 Q. Well, with respect -- I get to ask the 7 questions and I'll get to the amendment, I promise you. 8 What I'm interested in here is just what's in this 9 Asset Purchase Agreement. And I think you said that 10 there are other parts of this contract that I'm 11 ignoring and I would like to know what parts those are? 12 MR. NORMAND: Objection, calls for a 13 narrative. You want him to page through the APA? 14 MR. TIBBITTS: Yeah, why don't we do 15 that? 16 THE WITNESS: Yeah, do you want me to go 17 all the way through? I mean, I covered some of this, I 18 believe, in one of my declarations where I had spent 19 the time to go through the APA and identify areas that 20 talk about what is sold and certainly what the intent 21 of what was sold. And so, you know, it says -- well, 22 I'm not going to go through it. I mean, unless you 23 want me to go through each page of the APA right now, I 24 can't answer your question with more specific -- 25 BY MR. MELAUGH:</p>
<p style="text-align: right;">Page 31</p> <p>1 interest to the assets relating to the business, and 2 then on the next page it says that those assets won't 3 exclude the things listed in the excluded assets? 4 A. Uh-huh. 5 MR. NORMAND: Objection to form. 6 BY MR. MELAUGH: 7 Q. Do I have that right? 8 A. That's what the words say. 9 Q. And on the list of excluded assets is the 10 phrase, quote, all copyrights? 11 MR. NORMAND: Objection to form. 12 BY MR. MELAUGH: 13 Q. Isn't that right? 14 A. That's what the words say. 15 Q. And so wouldn't you agree then that on the 16 face of this contract, apart from the later amendment, 17 all copyrights are excluded from the assets 18 transferred? 19 A. No. 20 MR. NORMAND: Objection to form. 21 THE WITNESS: You're picking out two 22 sections of the contract and ignoring other items in 23 the contract, in the amendment. 24 BY MR. MELAUGH: 25 Q. So what items am I -- I'm not talking about</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. You said earlier, quote, you're picking out 2 two sections of the contract and ignoring other items 3 in the contract. I want to know what other items you 4 had in mind when you said that? 5 MR. NORMAND: Objection to form. The 6 rest of the contract. 7 MR. MELAUGH: Mr. Normand, that may be 8 your answer, but -- 9 THE WITNESS: That's my answer. That's 10 my answer. I have asked you before do you want me to 11 go through each page of the agreement and start talking 12 about which sections of the agreement identify 13 statements about what was transferred and what was 14 sold? 15 I mean, for one, you can go back to -- 16 was it -- a Schedule C which lists all the trademarks. 17 If they weren't transferred as part of this agreement, 18 why are they listed? There is certainly no right in 19 this contract granted to use the trademarks, so they 20 obviously must have been transferred. Otherwise, we 21 would have been using them without having any right to 22 do that. 23 The copyrights must have been 24 transferred. There is no right in this contract to 25 make copies of the software, so obviously the</p>

9 (Pages 30 to 33)

James Wilt

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1 copyrights must have been transferred. Otherwise, we
 2 would have been violating copyright law with no
 3 objection from Novell for probably a good ten years.
 4 Can you show me in this contract where
 5 there is a right to reproduce or a right to grant
 6 someone the right to reproduce other than to transfer
 7 the copyright to us?
 8 BY MR. MELAUGH:
 9 Q. Sir, I have a couple of questions about what
 10 you have just said. Did you say that no trademarks
 11 were transferred under this contract and --
 12 A. No, they are transferred.
 13 Q. They are transferred?
 14 A. Because there is no right to use the
 15 trademarks that's explicitly put into this agreement,
 16 so the only way we had a right to use the trademarks is
 17 if they were transferred to us. Then you have an
 18 implicit right to use the trademark because you own
 19 them, which is what happened in this agreement.
 20 And the same thing with the copyright. There
 21 is no explicit right to copy. There is no explicit
 22 right to grant others to copy. You don't need it in
 23 this agreement because the copyright was transferred to
 24 us.
 25 Q. I take it then your testimony is that when the

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1 excluded assets says all copyrights, it means something
 2 less than all copyrights?
 3 MR. NORMAND: Objection to form.
 4 THE WITNESS: It certainly does not mean
 5 all copyrights in the broadest sense of the word. In
 6 fact, it was referring to the copyrights related to the
 7 NetWare assets, which were not transferred and sold to
 8 SCO.
 9 BY MR. MELAUGH:
 10 Q. Where in this agreement does it say that the
 11 phrase "all copyrights" refers only to NetWare
 12 copyrights?
 13 MR. NORMAND: Objection to form.
 14 THE WITNESS: I don't know that I can say
 15 that in this agreement those explicit words are there.
 16 I believe it was the amendment that helped clarify that
 17 issue because the contract may have been poorly
 18 drafted.
 19 BY MR. MELAUGH:
 20 Q. Okay. I think you can put the Asset Purchase
 21 Agreement to the side now. I have some more general
 22 questions at this point. Now, the time frame I'm going
 23 to be asking about is just prior to the Asset Purchase
 24 Agreement. Can you give me a general overview of what
 25 SCO is doing at this point? What is SCO's business at

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1 this point?
 2 MR. NORMAND: Objection to the form.
 3 THE WITNESS: Yeah, what -- can you be a
 4 little bit more specific? We were in business to make
 5 money. I mean, that's --
 6 BY MR. MELAUGH:
 7 Q. That's a good -- I think that's a fair
 8 clarification. What -- so how is SCO making money?
 9 What is it doing to make money?
 10 A. Selling product and services to the company
 11 and collecting that revenue.
 12 Q. And what sorts of products is it selling?
 13 This is before the Asset Purchase Agreement.
 14 A. It was selling software products.
 15 Q. What kind of software products?
 16 A. Licenses and some boxes. I mean, how specific
 17 do you want to get? If you want to get down to
 18 specific -- clarify your question and I'll answer it
 19 more specifically.
 20 Q. What kinds of licenses and boxes are you
 21 selling? I mean, what's the -- as a general matter,
 22 what products is SCO -- I'm not talking about -- I
 23 don't want to know lines and version numbers, but as a
 24 general matter, what kind of licensing and boxing
 25 business is SCO in?

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1 A. We sold system software, and some people, to
 2 clarify, classify it as Tarantella systems software,
 3 some people wouldn't. They would classify it as an
 4 application. Infrastructure products maybe is a more
 5 general term.
 6 Q. And the sorts of -- you said that -- you
 7 divided it into we're selling products and we're also
 8 selling services. What sorts of services was SCO
 9 selling at the time just prior to the Asset Purchase
 10 Agreement?
 11 A. The services were support contracts to either
 12 provide assistance to customers, provide break-fix
 13 assistance, services -- there were some installation
 14 and bespoke programming services sold.
 15 THE COURT REPORTER: I'm sorry, something
 16 services?
 17 THE WITNESS: Bespoke. Oh, installation
 18 services?
 19 BY MR. MELAUGH:
 20 Q. Did the services always relate to the products
 21 that SCO was selling or was there a broader class of
 22 services?
 23 A. At that time prior to the -- actually prior to
 24 the formation of the business unit, all the services
 25 were related to the products that we sold.

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1 A. Yes.
 2 Q. Now, I'm going to have the same sort of
 3 questions I had about the first declaration for you.
 4 Is this something that in the first instance you
 5 authored or is it something in the first instance that
 6 your counsel authored?
 7 A. The process was the same for this declaration
 8 as for the other.
 9 Q. So let me see if I can walk through that with
 10 your indulgence. That process was you spoke over the
 11 phone, they sent you a first draft, you had comments
 12 back about it, it proceeded from there?
 13 A. Yes.
 14 Q. Do you recall what comments you had on the
 15 first draft of this?
 16 A. No, actually I don't.
 17 Q. Do you recall how many drafts this went
 18 through before the document we see here?
 19 A. It could have been a couple of drafts.
 20 Q. Have you had any communications about this
 21 declaration with anyone other than SCO and its counsel?
 22 A. No.
 23 Q. Did you receive any compensation in connection
 24 with this declaration?
 25 A. No. But, again, I'll take your business card.

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1 Q. I'll keep that in mind. I don't think I have
 2 any more questions for you today.
 3 A. Okay.
 4 Q. And I spoke with opposing counsel off the
 5 record. I think I am going to have to leave this
 6 deposition technically open because I haven't received
 7 drafts of your declaration in production from counsel.
 8 It may be that I need to ask you more questions once I
 9 see those drafts, but aside from that, I have no more
 10 questions for you today.
 11 A. Okay.
 12 MR. NORMAND: Let me just state for the
 13 record I have had a conversation with counsel. To the
 14 extent the draft declarations that he refers to have
 15 not been produced, my view and SCO's view is that that
 16 is an issue that should have been raised before this
 17 deposition, so my position is the deposition is closed
 18 and that if the declarations or the draft declarations
 19 were to have been used at this deposition, it was an
 20 issue that counsel for Novell should have raised before
 21 the deposition today. But I take it we can't resolve
 22 that issue today.
 23 MR. MELAUGH: I agree we can't resolve
 24 that issue today. It's something that Mr. Normand and
 25 I will discuss after today.

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1 MR. NORMAND: And I have a few questions.
 2
 3 CROSS-EXAMINATION
 4 QUESTIONS BY MR. NORMAND:
 5 Q. Mr. Wilt, you were handed an Exhibit 25
 6 earlier in the day, which is --
 7 A. Yes.
 8 Q. -- what we have described as your first
 9 declaration. Have you had occasion recently to review
 10 that declaration?
 11 A. Yes, I did read through it last night.
 12 Q. Is there any part of the declaration that you
 13 feel is inaccurate or that you would like to correct?
 14 A. No.
 15 Q. If I could direct your attention to some
 16 language in that declaration. I'm looking at paragraph
 17 7 at the end where you say, in referring to the
 18 negotiations from August to September 1995 between
 19 Santa Cruz and Novell, that you, quote, "... understood
 20 Mr. Chatlos to be Novell's chief negotiator during
 21 those negotiations." Is that a correct statement?
 22 A. That is a correct statement.
 23 Q. You say in paragraph 8, quote, "It was my
 24 understanding and intent during those negotiations that
 25 SCO would acquire Novell's entire UNIX and UnixWare

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1 business, including the copyrights. I do not recall
 2 and do not believe that there ever was any instance in
 3 which anyone at SCO or Novell ever stated or exhibited
 4 any contrary intent or understanding to me or anyone
 5 else."
 6 Is that an accurate statement?
 7 A. That's an accurate statement.
 8 Q. You say in the back half of paragraph 9,
 9 quote, "It was my intent on behalf of SCO to acquire,
 10 through the APA, Novell's entire UNIX and UnixWare
 11 business, including the UNIX and UnixWare source code
 12 and all associated copyrights, and I believed then,
 13 open parens, as now, close parens, that Novell's intent
 14 was to sell all of those assets and rights."
 15 Is that an accurate statement?
 16 A. Yes, that's an accurate statement. You
 17 wouldn't have had a business without having the
 18 copyrights and trademarks.
 19 Q. You say in paragraph 12, quote, "I do not
 20 recall anyone on either side of the negotiations or
 21 transaction ever suggesting that Novell would retain a
 22 copyright relating to UNIX or UnixWare. I am not aware
 23 of any discussions, whether general or specific, during
 24 the negotiations that contradict my understanding of
 25 the transaction as set forth in this declaration."

James Wilt

<p style="text-align: right;">Page 78</p> <p>1 Is that an accurate statement? 2 A. That is an accurate statement. 3 Q. You say in paragraph 16, quote, "Pursuant to 4 the APA, the parties also signed a Technology Licensing 5 Agreement in early December 1995 in which Novell 6 licensed source code rights from SCO. In my view, this 7 licensing agreement was consistent with SCO's ownership 8 of the UNIX and UnixWare copyrights following the 9 closing of the APA," end quote. 10 Is that an accurate statement? 11 A. That's an accurate statement because if you 12 look at the Technology Licensing Agreement, it includes 13 our giving Novell the right to reproduce and license, 14 under certain conditions, that code, which if we didn't 15 own the copyrights and such, we wouldn't have had to 16 give to Novell and wouldn't have been able to give to 17 Novell. 18 Q. I direct you back to paragraph 10 of your 19 declaration. It states, quote, "Paragraph 4.16 of the 20 APA pertains to the binary royalty income stream that 21 Novell retained through the APA. The parties agreed to 22 the language in paragraph 41.6(b) in order allow Novell 23 to manage that royalty stream within the operation of 24 SCO's customer source code licenses - not at the 25 expense of SCO's right to enforce its intellectual</p>	<p style="text-align: right;">Page 80</p> <p>1 UNIX business, including the UNIX source code and 2 copyrights, to Santa Cruz except for binary royalties 3 paid under the existing agreements pursuant to which 4 UNIX System V, open paren, quote, SVRX, end quote, 5 close parens, licensees were paying such royalties, and 6 which Novell conveyed to Santa Cruz under the APA as 7 part of the UNIX business." 8 Is that an accurate statement? 9 A. That's an accurate statement, and it was the 10 existing licenses at the time of the transfer for SVRX 11 that Novell retained, you know, the equity interest or 12 the financial interest in. 13 Q. I'm looking at paragraph 5. You say, 14 beginning with the second sentence, quote, "My 15 understanding was that Novell had no interest in 16 continuing in the UNIX business at all. If Santa Cruz 17 had paid the full purchase price originally proposed by 18 Novell, Novell would not have retained the binary 19 royalty stream or any rights to protect that royalty 20 stream. That context makes it clear that it was the 21 intent of the APA and Amendment No. 1 that Novell 22 retain rights to protect the existing binary royalty 23 stream, but other than the limited interest in UNIX 24 that Novell retained under the Technology License 25 Agreement for use with NetWare, there was no other</p>
<p style="text-align: right;">Page 79</p> <p>1 property protections under any such licenses, and not 2 to permit Novell to waive any of those protections. I 3 have reviewed Amendment No. 2 to the APA and believe 4 that the language therein confirms that intent. In 5 light of my intent, and based on my understanding of 6 the parties' intent, I do not believe that Novell had 7 or has any right to waive, or to direct or require SCO 8 to waive, any of its intellectual property rights or 9 protections." 10 Is that an accurate statement? 11 A. That's an accurate statement. 12 Q. Let me direct your attention, Mr. Wilt, to 13 what was marked earlier as Exhibit 27, which was 14 described as your second declaration. 15 A. Okay. 16 Q. Have you had occasion recently to review 17 Exhibit 27? 18 A. Yes, I reviewed this yesterday again. 19 Q. Is there any aspect of Exhibit 27 that you 20 believe is incorrect or that you would like to correct? 21 A. No. 22 Q. Let me ask you about some specific paragraphs 23 in this declaration. You say in paragraph 4, quote, 24 "Santa Cruz's intent and agreement under the APA and 25 Amendment No. 1 was for Novell to transfer the entire</p>	<p style="text-align: right;">Page 81</p> <p>1 reason or interest for Novell to have broader rights 2 relative" -- there is a "to" missing -- "relative to 3 the UNIX business and assets it sold Santa Cruz." 4 Is that an accurate statement? 5 A. That's an accurate statement. 6 Q. I direct your attention to paragraph 9. 7 Quote, "Amendment No. 1 made clear that Santa Cruz was 8 not prohibited from amending or entering into new SVRX 9 licenses as a incidental part of licensing UnixWare. 10 UnixWare products are built on the prior versions of 11 the UNIX technology. Accordingly, when Novell and its 12 predecessors licensed a UnixWare product to a customer, 13 they also licensed all prior products as an incidental 14 part of the license." There is an "of" missing. 15 "Amendment No. 1 reflected the parties' intent 16 and understanding that Santa Cruz would continue to 17 license the prior UnixWare and SVRX products with its 18 UnixWare licenses without additional approvals from 19 Novell and without remitting any payments to Novell. 20 This was simply consistent with the reality of 21 licensing UnixWare," end quote. 22 Is that an accurate statement? 23 A. That's an accurate statement. 24 Q. You say in paragraph 10, quote, "The APA and 25 amendments thereto thus reflect Santa Cruz's intent in</p>

21 (Pages 78 to 81)