

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
--oOo--

THE SCO GROUP, INC.,
Plaintiff/Counterclaim Defendant,
vs. No. 2:04CV00139
NOVELL, INC.,
Defendant/Counterclaim Plaintiff,

Videotaped Rule 30 (b)(6) Deposition of

MICHAEL J. DANAHER

Friday, April 27, 2007

Reported by:
Leslie Rockwood
CSR No. 3462
Job No. 193580

Page 1

1	INDEX OF EXAMINATION	
2	Page	
3	Examination by Mr. Normand	6
4		
5		
6		
7		
8	INDEX OF EXHIBITS	
9	Number Description Page	
10	EX 1066 SCO's Notice of Third Party	7
11	Subpoena to Wilson Sonsini	
	Goodrich & Rosati, PC,	
	2/09/07.	
12		
13	EX 1067 Agreement and Plan of	19
	Reorganization, 8/01/00.	
14	EX 1068 Intellectual Property	22
	Assignment, 5/07/01.	
15		
16	EX 1069 Exhibit 13.15D, Group	46
	Products.	
17	EX 1070 Exhibit 13.15A, Contributed	46
	Assets.	
18		
19	EX 1071 Email from Greg Forman to	64
	Harrison Colter, 4/27/01.	
20	EX 300 Letter to Steven M. Sabbath	91
	from Barry E. Taylor, 9/01/95.	
21		
22	EX 301 Email string from Shana M.	96
	Solomon to Steven Liu,	
	4/26/01.	
23		
24	EX 302 Email string from Regan Grilli	98
	to Shana Solomon and others,	
	4/30/01.	
25		

Page 3

1 APPEARANCES:
2
3 For the Plaintiff/Counterclaim Defendant:
4 Edward Normand
5 -and-
6 Thomas Strong (paralegal)
7 Boies, Schiller & Flexner, LLP
8 333 Main Street
9 Armonk, New York 10504
10 (914) 749-8200
11
12 Ryan E. Tibbitts
13 The SCO Group, General Counsel
14 355 South 520 West, Suite 100
15 Linden, Utah 84042
16 (801) 765-4999
17 For the Defendant/Counterclaim Plaintiff:
18 Kenneth Brakebill
19 Morrison & Foerster, LLP
20 425 Market Street
21 San Francisco, California 94105-2482
22 (415) 268-7455
23 For The Witness:
24 Mark Parnes
25 Wilson Sonsini Goodrich & Rosati, PC
650 Page Mill Road
Palo Alto, California 94304-1050
(650) 320-4878
The Videographer: Marty Majdoub

Page 2

1	INDEX OF EXHIBITS (Continued)	
2	Number Description Page	
3	EX 303 Email from Shana Solomon to	98
	Regan Grilli and others,	
	5/03/01.	
4		
5	EX 304 Letter to Ladies and Gentlemen,	98
	from Wilson Sonsini Goodrich	
	& Rosati, PC, 5/07/01.	
6		
7	--oOo--	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Page 4

1 1995.
2 MR. PARNES: That's fair.
3 THE WITNESS: That's fair.
4 To my knowledge, no. To my knowledge, no.
5 **Q. BY MR. NORMAND: So to your knowledge, is**
6 **there any representation or warranty or statement in the**
7 **agreement and plan of reorganization that you believe is**
8 **inaccurate?**
9 **A. To my knowledge, no. No.**
10 **Q. I take it you don't know the answer to that**
11 **question with respect to Mr. Liu's knowledge?**
12 **A. Well, I'm sure that SCO and Steve Liu would**
13 **have done their best to be honest. You do your best in**
14 **these reps and in the disclosure schedules that go with**
15 **them that have to be read together. Right? And you do**
16 **your best to present all the facts that you have because**
17 **if you fail to leave some out, maybe there's an escrow**
18 **claim or something.**
19 **So they would have tried to be accurate on**
20 **that, and for all kinds of reasons. One is integrity,**
21 **and two, it's the right practice for protecting the**
22 **client and for SCO to protect itself.**
23 **So, you know -- so I'd be surprised if**
24 **anybody felt that the reps and warranties and disclosure**
25 **schedule were inaccurate.**

Page 41

1 **Q. And as you sit here, do you have any reason**
2 **to believe that the reps and warranties and disclosure**
3 **schedules in the agreement and plan of reorganization are**
4 **inaccurate?**
5 MR. BRAKEBILL: Foundation.
6 THE WITNESS: No, I'm not aware of any
7 inaccuracy. I'm not aware of any claims that were
8 brought up during the claim period. I'm not aware of
9 that.
10 **Q. BY MR. NORMAND: Do you have a view as to**
11 **whether under the agreement and plan of reorganization**
12 **Santa Cruz intended to transfer to Caldera certain**
13 **intellectual property?**
14 **A. I know at the general level that they**
15 **certainly intended to transfer intellectual property.**
16 **That was the bulk of the assets. With respect to any**
17 **particular copyright or license, you know, that I can't**
18 **say because I didn't get involved in those details.**
19 **The -- it looks like --**
20 MR. NORMAND: Why don't you stop, actually.
21 THE VIDEOGRAPHER: Do you want to go off the
22 record?
23 MR. NORMAND: Let's give it 30 seconds.
24 (Interruption in proceedings.)
25 MR. NORMAND: Do you want to take a break,

Page 42

1 Mark?
2 MR. PARNES: No. That was Aaron. So he
3 didn't know when you guys were going to be ready for him.
4 THE WITNESS: Sounds like he may have more
5 knowledge of use to you. I'm afraid I'm not able to
6 address some of your questions.
7 **Q. BY MR. NORMAND: What I was trying to get at**
8 **with my question was, at least part of what I'm trying to**
9 **get at is: Do you have an understanding of the**
10 **intellectual property issue that I just asked you about**
11 **as a result of reading the agreements or do you have an**
12 **independent recollection of it being an issue or is it**
13 **somewhere in between?**
14 MR. BRAKEBILL: Vague and ambiguous,
15 compound.
16 THE WITNESS: Yeah.
17 MR. BRAKEBILL: You can answer.
18 THE WITNESS: We were selling the business
19 and the intellectual property rights that went with the
20 business. So at a high level, my understanding of the
21 transaction was SCO transferred whatever rights it had to
22 Caldera. And I was not involved in any discussions about
23 any individual right within that basket of rights on
24 that. But I think SCO wanted to transfer whatever it had
25 that was useful to that.

Page 43

1 **Q. BY MR. NORMAND: There's a phrase that's been**
2 **banded about in the litigation, and I'll use it, and**
3 **your counsel can object or you can tell me if you're not**
4 **comfortable with it. But as you sit here, is it your**
5 **view that the agreement and plan of reorganization speaks**
6 **for itself?**
7 MR. PARNES: You can answer if you
8 understand.
9 THE WITNESS: I think it probably does, but
10 maybe there's a paragraph or section here or there that's
11 not clear and people's memories might augment. But I
12 think, you know, most corporate lawyers could pick this
13 up and come to an understanding of it.
14 **Q. BY MR. NORMAND: And if I were to ask you the**
15 **same question regarding the intellectual property**
16 **assignment, what would your answer be?**
17 **A. That it should speak for itself.**
18 **Q. I had asked you a series of questions earlier**
19 **about the principal negotiators on both sides with**
20 **respect to the agreement and plan of reorganization.**
21 **A. Uh-huh.**
22 **Q. I want to ask those questions about the**
23 **intellectual property assignment. Would your answers be**
24 **any different?**
25 **A. I expect it would not have gone up to the**

Page 44

11 (Pages 41 to 44)

1 Doug Michaels level. It would have been handled by Steve
 2 Sabbath. That's my guess, but I don't recall discussions
 3 on those.
 4 Q. Do you have a view as to on the Caldera side
 5 who would have been focused on the intellectual property
 6 assignment?
 7 A. Probably counsel, I think. And --
 8 Q. You mean Brobeck?
 9 A. The Brobeck and -- I don't know -- I don't
 10 know who at Caldera they might have been working most
 11 closely with.
 12 Q. Do you recall whether there were any in-house
 13 counsel at Caldera in connection with these transactions?
 14 A. I was just asking myself that question, and
 15 there may have been, but I don't remember. There may
 16 well have been.
 17 Q. And why do you say that the intellectual
 18 property assignment would not have gone up to the Doug
 19 Michaels level, or why do you offer that view?
 20 A. I think Doug Michaels -- the high level
 21 agreement is that we're transferring over this business
 22 and all our rights that go with this business. That's
 23 all that Doug needs to know with respect to that topic.
 24 And then it's up to the attorneys and whatever to work
 25 through the details of implementing that.

Page 45

1 So, you know, we weren't -- to my knowledge,
 2 we weren't trying to retain rights. We weren't planning
 3 to, you know, be in that business, anymore. So that
 4 would have been an implementation thing.
 5 Q. Apart from your discussions with counsel, do
 6 you have any understanding of the litigation that brings
 7 us here today?
 8 A. No.
 9 Q. Good for you.
 10 A. Okay. I don't think I was aware of who the
 11 parties were to the litigation until Wednesday when Mark
 12 told me.
 13 MR. BRAKEBILL: Can we take a break soon?
 14 MR. NORMAND: Yeah, why don't we take a
 15 break, then.
 16 THE VIDEOGRAPHER: We are now going off the
 17 video record. The time is 10:52 a.m.
 18 (Recess.)
 19 THE VIDEOGRAPHER: We are now back on the
 20 video record. The time is 11:02 a.m.
 21 (Exhibits 1069 and 1070 marked.)
 22 Q. BY MR. NORMAND: The documents that have just
 23 been marked Exhibits 1069 and 1070 are exhibits to the
 24 agreement and plan of reorganization.
 25 MR. BRAKEBILL: Which is 1069 and which is

Page 46

1 1070?
 2 MR. NORMAND: 1069 is 13.15 D, group
 3 products.
 4 Q. So I don't want to take up too much of your
 5 time with this. But I do want to take a shot at seeing
 6 if I can refresh your recollection.
 7 A. Sure.
 8 Q. If you look at the agreement and plan of
 9 reorganization.
 10 A. Okay. Any particular page?
 11 Q. Yes, sir, page 75, which is Section 13.15,
 12 certain defined terms?
 13 A. Uh-huh.
 14 Q. And then if you turn the page --
 15 A. Okay.
 16 Q. -- to the definition of contributed assets?
 17 A. Okay.
 18 Q. That cross references Exhibit 13.15 A.
 19 A. Uh-huh.
 20 Q. Do you see that language?
 21 A. Yeah.
 22 Q. And then if you could turn your attention to
 23 Exhibit 13.15 A, subtitled "Contributed Assets"?
 24 A. Uh-huh.
 25 Q. The language of paragraph 1 begins: "With

Page 47

1 the exception of third-party encumbrances as set forth in
 2 Exhibit 13.15 E, all rights and ownership of UNIX,
 3 UnixWare, and Open Server, including all versions of
 4 UNIX, UnixWare, and Open Server, and all copies of UNIX,
 5 UnixWare, and Open Server (including revisions, upgrades
 6 and updates in process) all intellectual property rights
 7 appurtenant thereto (excluding the UNIX trademark which
 8 is owned by The Open Group)." And the language goes on.
 9 Do you see that language?
 10 A. Uh-huh.
 11 Q. Does this language refresh your recollection
 12 or confirm your recollection that among the contributed
 13 assets that would be transferred to Caldera were the --
 14 all of the intellectual property rights appurtenant to
 15 UNIX, UnixWare, and Open Server?
 16 A. This is consistent with my understanding of
 17 the deal.
 18 MR. BRAKEBILL: I was just going to object to
 19 the use of the word "confirm." It mischaracterizes his
 20 earlier testimony.
 21 THE WITNESS: This is consistent in my
 22 understanding of the transaction.
 23 Q. BY MR. NORMAND: As you sit here, do you have
 24 any reason to believe that all of the intellectual
 25 property rights pertinent to UNIX, UnixWare, and Open

Page 48

1 **Doug Michaels left, Steve Sabbath left, and we were just**
2 **called on, you know, on occasion to help with this or**
3 **that, but our involvement was a lot less. So -- and then**
4 **the company was sold.**
5 **Q. The language we had walked through in the**
6 **intellectual property assignment a couple minutes ago --**
7 **A. Uh-huh.**
8 **Q. -- as you sit here, do you have any reason to**
9 **believe that any of that language I read into the record**
10 **is inaccurate?**
11 **A. Well --**
12 MR. BRAKEBILL: Vague and ambiguous.
13 THE WITNESS: The language is what it is. I
14 think you have to read it as a whole. Your questions
15 have been more to did they own all of this or all of
16 that. And that's not exactly what the language is
17 saying. The language is saying you're getting all of our
18 right, title, and interest.
19 **Q. BY MR. NORMAND: Let me make sure I'm clear.**
20 **I wasn't asking whether -- I wasn't re-asking my**
21 **question. My specific question was --**
22 **A. Do I have any reason to think it's**
23 **inaccurate? I'm sorry. I have no reason to think any of**
24 **it's inaccurate.**
25 **Q. And when you say "any of it," you mean the**

Page 57

1 language I read into the record from the intellectual
2 property assignment?
3 **A. Correct, correct. Now, taken as a whole, you**
4 **know, it's -- this is not a description of what the**
5 **rights were. It's a description of -- it's an**
6 **assignment. It's something that affects you get this.**
7 **But a description of what the rights were would have been**
8 **more what comes with the plan of reorganization and the**
9 **reps and warranties and disclosure schedule.**
10 **Q. And of course, I can't read all the language**
11 **of the plan -- maybe I should. But that language that I**
12 **did read into the record a few minutes ago, can you**
13 **recall whether you thought any of that language was**
14 **inaccurate?**
15 MR. BRAKEBILL: Vague and ambiguous.
16 THE WITNESS: Yeah, how do I say this? That
17 language said, as a whole, SCO was transferring all it
18 owned in those categories, and that's what was happening.
19 SCO was transferring all that it owned.
20 **Q. BY MR. NORMAND: But I take it when you heard**
21 **the language that I read into the record, you didn't**
22 **think any of it was inaccurate. Is that fair to say?**
23 MR. BRAKEBILL: Vague and ambiguous.
24 MR. PARNES: Counsel, you've lost me. Which
25 language now are you talking about?

Page 58

1 MR. NORMAND: I mean the language from the
2 agreement and plan of reorganization.
3 THE WITNESS: So you read the definition and
4 then you read the -- was it 1.4? I can't remember.
5 **Q. BY MR. NORMAND: Yeah, I read from this**
6 **document the definition of contributed assets or at least**
7 **pointed you to that language.**
8 **A. Yeah.**
9 **Q. And then we looked at the Exhibit 13.15 A**
10 **titled "Contributed Assets."**
11 **A. Okay. These are -- how to explain this? You**
12 **know, I think the document is not a representation of**
13 **what is. So if you asked a true-false question. It's a**
14 **representation of an agreement between the parties. So**
15 **I'm not -- I'm not used to the question you said accurate**
16 **or inaccurate. This is what we're giving you. And if**
17 **you pull out any particular clause and say is that**
18 **accurate or inaccurate, depends more on what the question**
19 **is, what's that pertaining to. It's not intended to be a**
20 **description of everything. Maybe I'm not being**
21 **informative enough there.**
22 **Q. Do you have a view, as you sit here, as to**
23 **whether Exhibit 13.15 A of the agreement and plan of**
24 **reorganization identifies all of the assets that Santa**
25 **Cruz intended to transfer to Caldera?**

Page 59

1 **A. As most good corporate attorneys do, they did**
2 **this as a catchall and then with specific things**
3 **identified. So the list itself of the specifics is**
4 **probably not universal. But the catchall was, you know,**
5 **all IP rights including the following. Does that answer**
6 **your question? The list of particulars is not**
7 **exhaustive.**
8 **Q. And you're saying that's -- you're saying**
9 **that is typical of what most good corporate attorneys do?**
10 **Is that what the beginning of your answer was?**
11 **A. Yeah, I think your question was: Does this**
12 **represent all of the assets they were transferring, you**
13 **know, in this category? And the answer is if you use the**
14 **catchall phrase, yes, it does. Just the specifics were**
15 **not exhaustive.**
16 **Q. And the view you just expressed, is that the**
17 **view of the law firm?**
18 MR. PARNES: I'll object as vague. What
19 view?
20 **Q. BY MR. NORMAND: Is it the view of the law**
21 **firm that Exhibit 13.15 A of the agreement and plan of**
22 **reorganization taken in its entirety --**
23 **A. Uh-huh.**
24 **Q. -- describes all of the assets that Santa**
25 **Cruz transferred to Caldera in connection with the**

Page 60

1 A. It was probably more on the corporate and
2 securities side of the transaction. Helping with that
3 part of the process, helping make sure we handled
4 shareholder approvals and proxies and SEC process
5 altogether. The -- that was a big part of it.
6 And as it turns out, I think the biggest
7 difficulty arose in the transaction was this thing
8 involving PWC and the SEC, and that had the potential to
9 derail the closing another six months, which would have
10 cost SCO an enormous amount of money given the ongoing
11 losses. And the fact that we were able to help persuade
12 the SEC to avoid that consequence, that was a major
13 accomplishment for SCO.
14 Q. In connection with the SCO Caldera
15 transaction, at the time of the transaction, did you
16 think it was possible that some of the representations
17 and warranties that Santa Cruz had made were inaccurate?
18 A. I would have expected them to be highly
19 accurate, that the team there would have been very
20 careful about what they were putting down. Steve and
21 Regan and Kim were -- you know, were a good team.
22 MR. NORMAND: I have no further questions.
23 And Ken, I don't know if you do, so let me
24 say now that I'd like to take the step of holding the
25 deposition open. It may be that I need to speak with

Page 81

1 Mr. Parnes about the nature of the deposition today, but
2 that's a subject for a later day.
3 MR. BRAKEBILL: I do have some questions.
4 MR. NORMAND: Do you want to sit here?
5 MR. BRAKEBILL: That's what I was wondering.
6 Maybe it's better to switch.
7 THE VIDEOGRAPHER: It's up to you.
8 MR. BRAKEBILL: I don't care, but you won't
9 be looking at the videotape.
10 MR. NORMAND: You've got a nice profile.
11 MR. PARNES: Why don't we switch.
12 MR. BRAKEBILL: Actually, I want to take just
13 a second, go off the record.
14 THE VIDEOGRAPHER: We are now going off the
15 video record. The time is 11:57 a.m.
16 (Brief interruption.)
17 THE VIDEOGRAPHER: We are now back on the
18 video record. The time is 11:59 a.m.
19 MR. BRAKEBILL: I can still say good morning.
20 THE WITNESS: Okay, good.
21 EXAMINATION BY MR. BRAKEBILL
22 Q. I'll try to be quick. I have a handful of
23 questions relating to some topics that Mr. Normand asked
24 you as well as just relating to the Caldera transaction
25 generally.

Page 82

1 You testified just a few moments ago that --
2 I believe that all of the schedules attached to the
3 agreements for the Santa Cruz Caldera transaction were
4 prepared by the Santa Cruz team; is that right?
5 MR. NORMAND: Objection to form.
6 Q. BY MR. BRAKEBILL: I think you said by
7 Mr. Sabbath and team?
8 MR. NORMAND: Same objection.
9 THE WITNESS: All the schedules listing
10 assets and the like would have been prepared by Sabbath
11 and team.
12 Q. BY MR. BRAKEBILL: Just so the record is
13 clear, there was an Exhibit 1069 and 1070 that
14 Mr. Normand showed you?
15 A. Uh-huh.
16 Q. One of them is called "Group Products."
17 That's an Exhibit 13.15 D?
18 A. Yeah.
19 Q. And then there's an exhibit 13.15 A called
20 "Contributed Assets." Do you see those?
21 A. Yes.
22 Q. Just so the record is clear, is it your view
23 that these two schedules were prepared by Mr. Sabbath and
24 company at Santa Cruz, and not Wilson Sonsini?
25 MR. NORMAND: Objection to form.

Page 83

1 THE WITNESS: Okay. By the way, I don't mean
2 to exclude the possibility Caldera and their side might
3 have been involved, but the exhibit group products which
4 is the list of products, source code, other products
5 under development, and auxiliary products, that would
6 have been prepared by the client, and perhaps the Caldera
7 product people would have gotten involved to cross-check
8 against their list.
9 The exhibit contributed assets, I'm sure part
10 of the drafting was done by Brobeck. But particularly
11 when you go down to the attachment to that, which is
12 the -- you know, two pages of fine print on the things
13 here, that would have been prepared by the client.
14 Q. BY MR. BRAKEBILL: And the client is Santa
15 Cruz; right?
16 A. Santa Cruz, yeah. And again, Novell may have
17 cross-checked this --
18 MR. PARNES: Not Novell.
19 THE WITNESS: Not Novell. Pardon me,
20 Caldera.
21 Q. BY MR. BRAKEBILL: The schedule of
22 contributed assets was not prepared by Wilson Sonsini; is
23 that right?
24 A. That's right.
25 Q. For the contributed asset schedule, is it

Page 84