

EXHIBIT 5

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

AARON J. ALTER

Friday, April 27, 2007

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

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Santa Cruz Operation, Inc.
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with attachment, 9/18/95.

--oOo--

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APPEARANCES:

For the Plaintiff/Counterclaim Defendant:
Edward Normand

-and-

Thomas Strong (paralegal)
Boies, Schiller & Flexner, LLP
333 Main Street
Armonk, New York 10504
(914) 749-8200

Ryan E. Tibbitts
The SCO Group, General Counsel
355 South 520 West, Suite 100
Linden, Utah 84042
(801) 765-4999

For the Defendant/Counterclaim Plaintiff:

Kenneth Brakebill
Morrison & Foerster, LLP
425 Market Street
San Francisco, California 94105-2482
(415) 268-7455

For The Witness:

Mark Parnes
Wilson Sonsini Goodrich & Rosati, PC
650 Page Mill Road
Palo Alto, California 94304-1050
(650) 320-4878

The Videographer: Marty Majdoub

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BE IT REMEMBERED that on Friday, April 27, 2007,
commencing at the hour of 1:03 p.m., at the law offices
of Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road,
Palo Alto, California, before me, LESLIE ROCKWOOD, a
Certified Shorthand Reporter in the State of California,
personally appeared

AARON J. ALTER

called as a witness by the Plaintiff-Counterclaim
Defendant in the above-entitled action, who, having been
duly sworn, by the Certified Shorthand Reporter to tell
the truth, the whole truth and nothing but the truth,
testified under oath as follows:

--oOo--

THE VIDEOGRAPHER: Good afternoon. Here
begins Videotape Number 1 in the deposition of Aaron
Alter in the matter of SCO Group versus Novell, Inc., in
the United States District Court for the District of
Utah, case number 2:04CV00139.

Today's date is April 27th, 2007. The time
is 1:04 p.m. This deposition is being taken at 650 Page
Mill Road, Palo Alto, California. The videographer is
Marty Majdoub, here on behalf of Esquire Deposition
Services, 505 Sansome, Suite 502, San Francisco,
California.

Would all counsel please identify yourselves

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1 (Pages 1 to 4)

1 Q. You say insufficient consideration was being
2 paid. Wasn't the Novell interest in the revenue stream
3 designed to bridge the price gap?
4 MR. BRAKEBILL: Argumentative, foundation.
5 MR. PARNES: You can answer.
6 THE WITNESS: It was certainly intended to be
7 a -- a bridge. I don't know that it was a sufficient
8 bridge or that was viewed by Novell as sufficient.
9 Q. BY MR. NORMAND: Do you have a view on that
10 front on behalf of the Wilson Sonsini firm?
11 A. My view is that the rights that were
12 retained, including but not limited to the revenue
13 stream, including the equitable title, including the
14 patents, including everything that's set out at Exhibit
15 1.1(b) was exactly what the intention of the parties was,
16 was to retain these rights on behalf of Novell.
17 Q. Was it Novell's view that owning the
18 copyrights in the UNIX and UnixWare source code would
19 permit Novell to continue to have rights in the revenue
20 stream if Santa Cruz were to go bankrupt?
21 A. I can't speculate, and I'm not sure I even
22 understand the question.
23 MR. BRAKEBILL: By the way, I don't know if
24 it's intentional. You keep asking Novell's view. It's
25 clear, it is his view, not Novell's. We will be

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1 providing a Novell 30(b)(6) witness.
2 MR. NORMAND: Well, I think I'm entitled to
3 ask the Wilson Sonsini firm for its understanding of
4 Novell's view.
5 MR. BRAKEBILL: You are. True. I think the
6 question reflects that. I think that's implicit. I just
7 want to make the record clear.
8 Q. BY MR. NORMAND: I guess what I've understood
9 you to say is Novell would be in a better position to
10 claim the rights to the revenue stream if it retained
11 certain intellectual property in UNIX and UnixWare than
12 if it had not retained certain intellectual property
13 rights.
14 A. No, I don't think that's what I said. If I
15 said that, I may have misspoken. I think Novell --
16 Novell did retain the rights to the revenue stream and
17 the royalty payments, and it did retain other
18 intellectual property rights in the assets that were
19 transferred. They -- that was done in -- I wouldn't tie
20 the retention of the other intellectual property rights
21 to the specific exigency of maintaining rights to the
22 royalty stream in the event of a bankruptcy of SCO.
23 It was there was consideration of stock in
24 from SCO, of collection and payment of the royalty
25 stream, and retention of rights as three different

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1 categories of assets retained and consideration paid by
2 SCO in the transaction.
3 Q. Was it the view of the Wilson Sonsini law
4 firm that if Santa Cruz were to go bankrupt, that the
5 rights to the revenue stream would follow the
6 intellectual property that Novell had retained?
7 A. I don't -- I don't know what our view was at
8 the time, but I certainly don't -- I don't conceive now
9 of the linkage of those two.
10 Q. And why not?
11 A. Because I don't understand the theory that's
12 underlying the question.
13 Q. Was there any link, in the view of the law
14 firm, between Novell's decision to retain certain
15 intellectual property rights, on the one hand, and on the
16 other hand, the fact that the consideration being paid
17 was not cash?
18 MR. BRAKEBILL: Vague and ambiguous.
19 MR. PARNES: You can answer.
20 THE WITNESS: Okay.
21 I don't recall a distinction being drawn
22 between cash versus stock consideration. So I guess the
23 answer would be no.
24 Q. BY MR. NORMAND: So it wasn't cash. Let me
25 say that to myself. Was there any link, in the view of

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1 the law firm, between Novell's decision to retain certain
2 intellectual property rights, on the one hand, and the
3 fact that the value of the consideration being paid was
4 less than what Novell thought the value of the assets
5 were?
6 MR. PARNES: I think that's been asked and
7 answered, but you can answer.
8 THE WITNESS: That is my recollection.
9 Q. BY MR. NORMAND: And this will be a question
10 I guess I asked earlier. Let me try to make sure I
11 understand or twist it a little bit.
12 Is it the law firm's view that the Novell
13 interest in the revenue stream was not sufficient to
14 account for the full value of the assets as Novell saw
15 them?
16 A. I think my answer is "yes," that I view the
17 deal structure as giving Novell three different forms
18 of -- well, I don't know quite how to -- so the deal
19 structure had three aspects of it for Novell. One was
20 stock in from SCO; the second was retention of 95 percent
21 of the royalty payments from the USL licenses; and the
22 third was the underlying intellectual property assets
23 that had been acquired, or a portion of them that had
24 been acquired from USL. And that's why -- that's why
25 there's a long list of assets being transferred and those

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1 was transferred, the assets which were retained are
 2 specified. And of the assets that were transferred, they
 3 constitute a sufficient bundle of rights to give SCO the
 4 ability to use the technology and develop enhancements
 5 and run their business and run the UnixWare business
 6 going forward.

7 If you characterize it as a license, I don't
 8 see language saying it's not a license. I don't see
 9 language saying it is a license. I think we can parse
 10 what a license is. But I believe that the rights that
 11 were granted were sufficient to enable SCO to run the
 12 UNIX and UnixWare business going forward from the point
 13 in time that the transaction was done.

14 You know, the only reference to a license I
 15 recall -- and I'm just sort of refreshing my recollection
 16 in 1.6 -- was that there was a specific license back of
 17 the enhancements so that Novell wouldn't have to pay
 18 additional consideration to the extent that SCO developed
 19 additional improvements or enhancements on the UNIX and
 20 UnixWare technology that was deemed licensed back to
 21 Novell.

22 Q. And in the view of the law firm, were the
 23 rights, bundles of rights that Santa Cruz acquired, ones
 24 that constituted a license?

25 MR. PARNES: Objection. Lacks foundation,

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1 but you can answer.

2 Q. BY MR. NORMAND: Well, they acquired a bundle
 3 of rights; correct?

4 A. Yes.

5 Q. Okay. In your view, were those bundle of
 6 rights ones that constituted a license?

7 A. Well, I -- you've characterized it as a
 8 license.

9 Q. No, I'm asking you.

10 A. Okay.

11 Q. I don't have a view that I'm articulating
 12 today. I just mean to ask you.

13 A. Okay. So I understand, but you've framed it
 14 in terms of it being a license per se, and I'm -- you're
 15 asking me -- perhaps, why don't you ask me the question
 16 again.

17 Q. So I thought we had just agreed that there
 18 was some bundle of rights.

19 A. Yes.

20 Q. Everyone can argue about that, but there is
 21 some bundle of rights that Santa Cruz acquired.

22 A. Yes.

23 Q. And I am using a label in the form of a
 24 question and asking you as an attorney or as someone
 25 involved with this, would you describe the bundle of

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1 rights as a license to Santa Cruz?

2 MR. BRAKEBILL: Vague and ambiguous.

3 MR. PARNES: You can answer.

4 THE WITNESS: I would describe it as a
 5 transfer of assets to enable Santa Cruz to run a business
 6 that Novell sought to sell.

7 Q. BY MR. NORMAND: And did Novell intend to
 8 retain the right to develop UNIX and UnixWare source
 9 code?

10 A. I don't know what the intention was in
 11 retaining these rights beyond what I've already testified
 12 to. I'll stop at that.

13 Q. In the firm's view, following the execution
 14 of the APA, would Novell have had the right to develop
 15 the UNIX and UnixWare source code under the terms of the
 16 APA?

17 MR. BRAKEBILL: Calls for a legal conclusion.

18 MR. PARNES: Also calls for speculation. But
 19 you can, if you understand the question, you can --

20 THE WITNESS: Could I ask you to repeat the
 21 question, please.

22 Q. BY MR. NORMAND: The question is whether
 23 following the execution of the APA, in the view of the
 24 Wilson Sonsini law firm, would Novell have been within
 25 its rights in developing the UNIX and UnixWare source

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1 code?

2 A. Yes, insofar as they retained those as
 3 assets.

4 Q. But you don't know whether that was
 5 specifically part of Novell's intent?

6 A. That's right. I do not know. I have no
 7 reason to believe that was an intention in retaining
 8 those rights.

9 Q. And similarly, after the execution of the
 10 APA, in the view of the law firm, would Novell have been
 11 within its rights in making copies of the UNIX and
 12 UnixWare source code?

13 A. Yes.

14 Q. And do you know whether that was among the
 15 reasons that Novell intended to retain certain of the
 16 intellectual property in UNIX and UnixWare?

17 A. I don't know.

18 Q. And similarly, in your view or the view of
 19 the firm, following execution of the APA, would Novell
 20 have been within its rights in distributing copies of the
 21 UNIX and UnixWare source code?

22 A. I don't recall a prohibition against their
 23 doing that in the asset purchase agreement.

24 Q. And do you know whether the right to
 25 distribute copies of the UNIX and the UnixWare source

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1 code was among the reasons that Novell intended to retain
 2 certain intellectual property?
 3 A. I do not know that.
 4 Q. In 1995, did Novell convey to Santa Cruz its
 5 intent to retain the UNIX and UnixWare copyrights?
 6 MR. PARNES: I'm sorry.
 7 (The record was read by the reporter as
 8 follows:
 9 "QUESTION: In 1995, did Novell convey to
 10 Santa Cruz its intent to retain the UNIX and
 11 UnixWare copyrights?")
 12 THE WITNESS: It's -- on the face of the
 13 agreement they are retained. So absent that, I don't
 14 know what else -- how else to answer. Or aside from
 15 that, I should say.
 16 Q. BY MR. NORMAND: In 1995, did Wilson Sonsini
 17 convey to Santa Cruz Novell's intent to retain the UNIX
 18 and UnixWare copyrights?
 19 A. I would answer the same way, Ted, that
 20 it's -- in my judgment, clear on its face and evidenced
 21 in the document.
 22 Q. And apart from that, if there were some other
 23 manner in which Novell's intent was communicated, you're
 24 not aware of that; is that what you would say?
 25 A. That's correct.

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1 Q. I'd like to direct your attention to
 2 Section 1.7 of the APA, and in particular 1.7 C, which is
 3 on page 6 of the APA. That section is titled "Taking of
 4 Necessary Action; Further Action," and states: "If at
 5 any time after the closing date any further action is
 6 necessary or desirable to carry out the purposes of this
 7 agreement, the parties agree to take and will take all
 8 such lawful and necessary and/or desirable action."
 9 Do you see that language?
 10 A. I do.
 11 Q. Do you have a view as to the purpose of
 12 Section 1.7 C of the APA?
 13 A. I would say that it's a fairly standard
 14 provision in asset transactions and mergers where if
 15 there was a loose end or something that clearly was
 16 intended by the parties to be -- to be done prior to the
 17 closing date, but subsequent to the transaction, there
 18 was no binding obligation, this would -- this would spur
 19 the parties to take such actions to the extent that there
 20 was an agreement between the parties to do so.
 21 Q. If you look at page 22 of the APA, there's a
 22 Section 4.9. And let me just ask you to read that to
 23 yourself. And let me know when you're done.
 24 A. Okay. I'm done.
 25 Q. Same general question. I know it's a general

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1 one. What is the purpose of that section?
 2 A. So that section is part of Article 4, and the
 3 covenants relate primarily to obligations between signing
 4 and closing and then to certain ongoing obligations like
 5 bulk sales filing under the commercial code or tax --
 6 who's going to do the tax returns and taking positions on
 7 the tax returns that are consistent.
 8 That is also meant as a fairly standard
 9 catchall provision to capture that which is not
 10 specifically set out as a covenant. And from the
 11 language, you can see it extends to obtaining consents
 12 and approvals from third parties as well.
 13 Q. There's a Section 4.12 as well.
 14 A. Yes.
 15 Q. Do you see any difference between 4.9 and
 16 4.12, or what is the purpose of 4.12?
 17 A. I think 4.12 refers with some specificity to
 18 the execution of instruments and documents to effect the
 19 purposes whereas I read 4-9, which may be a superset of
 20 4-12 to be focused on taking actions and obtaining
 21 documents from third parties as opposed to agreements
 22 between the two parties in 4-12.
 23 Q. Do you think the sections we've just looked
 24 at, 1.7 C, 4.9, 4.12, would apply in a situation where
 25 the agreement did not reflect the intent of the parties?

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1 MR. BRAKEBILL: Calls for a legal conclusion,
 2 speculation.
 3 MR. PARNES: You can answer.
 4 THE WITNESS: Ted, can I ask you to
 5 clarify -- so is it -- I would say that if the parties
 6 had an agreement and there were actions that needed to be
 7 taken to reflect that agreement, one could -- one party
 8 could turn to the other party and say take these
 9 provisions, we'd like you to execute this document, the
 10 certification, send us a copy of the tax return to carry
 11 out the intention as manifest in this agreement. So if
 12 that's -- is that responsive?
 13 Q. BY MR. NORMAND: It is. And it is, you know,
 14 a hypothetical so there is some speculation involved, but
 15 I'm just asking your view as to if the parties had come
 16 to a landing and decided that the agreement didn't
 17 reflect something they had agreed on, would these
 18 provisions apply where the parties were trying to now
 19 have that agreement reflected?
 20 MR. BRAKEBILL: Same objections.
 21 MR. PARNES: I'll join.
 22 If you understand the question.
 23 THE WITNESS: I think I do. I -- I should --
 24 I have to respond.
 25 MR. PARNES: I mean, if you understand what

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