

# No. 08-4217

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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**THE SCO GROUP, INC.,**

**Plaintiff-Appellant,**

**v.**

**NOVELL, INC.,**

**Defendant-Appellee.**

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On Appeal from the United States District Court for the District of Utah  
Hon. Dale A. Kimball, Presiding  
No. 2:04-CV-00139-DAK

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**APPELLANT'S RESPONSE TO WAYNE R. GRAY'S MOTION FOR  
LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF  
DEFENDANT/APPELLEE NOVELL, INC.**

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Because the parties did not litigate before the district court below the issue of the transfer of trademarks under the APA and the court did not resolve that issue in its appealed-from decisions or otherwise, Appellant, The SCO Group, Inc. opposes Wayne R. Gray's Motion for Leave to File Amicus Brief in Support of Defendant/Appellee Novell, Inc. insofar as the Motion seeks to (1) expand the scope of the appealed-from decisions by addressing matters that are not "relevant to the disposition of the case," see Fed. R. App. P. 29(b)(2); or (2) re-litigate issues resolved by the United States District Court for the District Florida that are now before the Eleventh Circuit on Mr. Gray's appeal. See Ex. 1.

SCO also submits that under Fed. R. App. P. 29(g) this Court should deny Mr. Gray permission to participate in oral argument, because the Motion is not relevant to the disposition of this appeal, see Fed. R. App. P. 29(b)(2), and is not timely for the reasons set forth by Novell in its opposition to the Motion.

SCO understands that the disposition of this Motion will not delay disposition of this appeal.

Respectfully submitted on this 4th day of May, 2009.

/s/ Edward Normand

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**CERTIFICATE OF SERVICE**

I, Edward Normand, hereby certify that on this 4th day of May, 2009, a true and correct copy of the foregoing **APPELLANT'S RESPONSE TO WAYNE R. GRAY'S MOTION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF DEFENDANT/APPELLEE NOVELL, INC.** was filed with the court and served via electronic mail to the following recipients:

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**CERTIFICATE OF DIGITAL SUBMISSION**

The undersigned certifies with respect to this filing that no privacy redactions were necessary. This **APPELLANT'S RESPONSE TO WAYNE R. GRAY'S MOTION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF DEFENDANT/APPELLEE NOVELL, INC.** submitted in digital form is an exact copy of the written document filed with the Clerk. The digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program (using Symantec Antivirus which is updated weekly) and, according to the program, is free of viruses.

Dated: May 4, 2009

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