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# **EXHIBIT 16**

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## INTELLECTUAL PROPERTY ASSIGNMENT

THIS INTELLECTUAL PROPERTY ASSIGNMENT (this "Assignment") is made as of May <u>1</u>, 2001 (the "Effective Date") by and between The Santa Cruz Operation, Inc. a California corporation having its principal place of business at 425 Encinal Street, Santa Cruz, California 95060 (the "Assignor") and Caldera International, Inc. a Delaware corporation having its principal place of business at 240 West Center Street, Orem, Utah 84057 (the "Assignee").

WHEREAS, Assignor and Assignee are parties to the Agreement and Plan of Reorganization, dated August 1, 2000, and amended September 13, 2000, December 12, 2000 and February 9, 2001 (collectively, the "Reorganization Plan"), which requires the execution of Ancillary Agreements, including an intellectual property assignment.

WHEREAS, Assignor has developed, created, written, and/or acquired certain inventions, patent application, trade secrets, trademarks and trademark applications, designs, products, processes and works of authorship prior to the Effective Date, including but not limited to, the software code, inventions, trade secrets, trademarks and trademark applications designs, products, processes and works of authorship listed in <u>Schedules A-C</u> attached hereto (the "Inventions and Works") (which do not include the Excluded Assets, as defined in the Reorganization Plan, and any intellectual property rights appurtenant thereto);

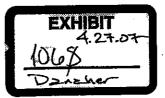
WHEREAS, Assignor owns certain rights, title and interest to the Invention and Works and patent rights, trade secret rights, trademarks, copyrights, design rights and other rights throughout the world appurtenant or related thereto, including certain rights to recover for past infringement of such rights;

WHEREAS, Assignee is desirous of acquiring all rights, title and interest in and to the Inventions and Works, pursuant to the Reorganization Plan; and

WHEREAS, Assignor retains a license to use the SCO and SCO and design trademarks and the UNIX, UnixWare and SCO OpenServer technology as set forth herein.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged by Assignor, the parties hereby agree as follows:

1. <u>Assignment</u>. Assignor hereby assigns, transfers and conveys to Assignee, and Assignee accepts, all of Assignor's right, title, and interest throughout the world in and to the Inventions and Works, including, but not limited to, any of the following appurtenant or related to the Inventions and Works: (i) all patents and patent applications and any and all patents that are or may be granted therefrom whether in the United States or any other country, including, without limitation, any extensions, continuations, continuations-in-part, divisions, reissues, reexaminations, and renewals thereof, or other equivalents thereof; (ii) all copyrights and all necessary and appropriate renewals and extensions thereof (iii) all trademarks, service marks, trade names, domain names, logos, trade dress, get up and product aesthetic features, including,



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without limitation, all registrations, applications for registration and common law rights thereto and all goodwill associated therewith; (iv) all design rights, whether registered, unregistered, patented, patentable or otherwise: (v) all trade secret rights and rights to enforce confidentiality or similar obligations in relation to the Inventions and Works; (vi) any and all other forms of intellectual property or proprietary right recognized anywhere in the world; and (vii) all rights and privileges pertaining to (i) through (vi), including without limitation, the right, if any, to sue or bring other actions for past, present and future infringement thereof ((i) through (vii) hereinafter collectively referred to as the "Rights"). Notwithstanding the foregoing, Assignor retains a perpetual, non-transferable, non-sublicensable, royalty free, license back to use the SCO and SCO and design trademarks without attribution to Caldera, to the extent that Assignor enjoyed such rights prior to entering into the Reorganization Plan; and Assignor retains i) a perpetual, non-transferable, non-sublicensable, royalty free license back of the UNIX, UnixWare and SCO Open Server source code for Assignor's internal business use only, and ii) a perpetual. non-transferable, non-sublicensable, royalty free license to any future enhancements (meaning bug fixes, patches and any minor modifications) for a period of five years, for Assignor's internal business use only.

2. <u>Protection</u>. Assignor further hereby assigns to and empowers Assignee, its successors, assigns or nominees, all rights to make applications for patents, copyright, trademark or design registrations or other forms of protection for the Inventions and Works and to prosecute such applications as well as to claim and receive the benefit of the right of priority provided by the International Convention for the Protection of Industrial Property, as amended, or by any convention that may henceforth be substituted for it, and the right to invoke and claim such right of priority without further written or oral authorization.

3. <u>Authorization to Record</u>. Assignor further agrees that this Assignment shall be deemed a full legal and formal equivalent of any assignment, consent to file or like document that may be required in any country for any purpose regarding the subject matter hereof, as well as constituting proof of the right of Assignee or its successors, assigns or nominees to apply for patent, copyright, trademark or design or other protection for the Inventions and Works and to claim the aforesaid benefits of the right of priority provided by the International Convention for the Protection of Industrial Property, as amended, or by any convention that may henceforth be substituted for it.

4. <u>Delivery</u>. Assignor agrees to deliver promptly to Assignee all the tangible examples reasonably requested by Assignee in Assignor's possession and all prototypes of the Inventions and Works held by Assignor as of the Effective Date.

5. Further Assurances. Assignor further agrees that Assignor will: (a) cooperate with Assignee's reasonable requests in the prosecution of patent, copyright, trademark or design applications on the Inventions and Works; (b) execute, verify, acknowledge and deliver all such reasonably required further papers, including applications and instruments of transfer; and (c) perform such other acts as Assignee lawfully and reasonably may request to obtain, maintain, defend or enforce Rights for the Inventions and Works any and all countries, and to vest title thereto in Assignee, or Assignee's successors and assigns. In the event that Assignee is unable to to secure Assignor's signature to any document it is reasonably entitled to hereunder, after making a reasonable effort to secure such signatures, Assignor hereby irrevocably designates and

appoints Assignee and its duly authorized officers and agents, as its agents and attorneys-in-fact to act for and on its behalf and instead of it, to execute and file any such document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Assignor.

6. <u>Moral Rights</u>. Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, Assignee hereby waives such Moral Rights. Assignee shall confirm any such waivers and consents from time to time as requested by the Assignor.

7. <u>Confidentiality</u>. Assignor hereby acknowledges and agrees that as of the Effective Date of this Assignment, the Inventions and Works, the Rights related or appurtenant thereto, and fact and terms and conditions of this Agreement are confidential and proprietary information of Assignee and Assignor may not use or disclose such information to any third party upon or after the Effective Date.

8. <u>Representations and Warranties</u>. Assignor hereby represents and warrants to Assignee the following:

(i) Assignor has the full power, authority and all rights necessary to transfer and assign Assignor's Rights in the Inventions and Works to Assignee and to carry out the terms and provisions of this Agreement;

(ii) Assignor's Rights in the Inventions and Works has not heretofore been pledged, hypothecated or otherwise encumbered and is, in all respects, free and clear of all encumbrances including, without limitation, interests, claims, options, prior assignments, licenses, leases, liens, charges or any other restrictions of any nature whatsoever; except for a security interest in all of the assets of Assignor, including the Inventions and Works, by The Canopy Group, filed with the California Secretary of State on January 12, 2001; and except for the pending opposition action against the UnixWare trademark in the EU.

(iii) By making this assignment Assignor will not breach any obligation to any third party under contract or otherwise;

(iv) The Inventions and Works do not infringe the Rights of any third

party;

(v) Assignor has no knowledge of any fact that would prevent Assignee's registration of any Rights related or appurtenant to the Inventions and Works or recording the transfer of Rights hereunder (except that Assignor may not be able to establish a chain of title from Novell Inc. but shall diligently endeavor to do so as soon as possible); and (vi) Assignor will not in the future register the Inventions and Works or any of the Rights related or appurtenant to the Inventions and Works.

Assignor agrees to defend and indemnify Assignee from and against any liabilities, claims, actions, demands or damages including, without limitation, reasonable attorneys' fees and costs arising from any breach of any of the foregoing warranties.

9. Miscellaneous. The waiver by either party of any breach of this Agreement or any right hereunder shall not constitute a waiver of any subsequent breach of this Agreement; nor shall any delay by either party to exercise any right under this Agreement operate as a waiver of any such right. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement. Any party to this Agreement that takes steps to enforce the terms of this Agreement shall be entitled to reimbursement of any costs and expenses. (including reasonable attorneys' fees) in the event of any such action. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of New York and the United States America without regard to conflicts of laws provisions thereof. The parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications, if any, relating to the subject matter of this Agreement. This Agreement shall be binding on the parties' respective heirs, executors, successors and assigns,

IN WITNESS WHEREOF, the parties hereto have executed this Intellectual Property Assignment as of the date first written above.

## **ASSIGNEE:**

CALDERA INTERNATIONAL, INC., a Delaware corporation

--By: <u>K</u> NEH Its: VP

## ASSIGNOR:

THE SANTA CRUZ OPERATION INC., a California corporation

By:				
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lts:				

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State of California	<u></u>
county of Santa Chiz	
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On Am 30 200 before mo	e, Naucy Valek-Condett, Notany Public') Harris and Thie of Officer (e.g., "Jane Doe, Hotary Public") Heresee Name(e) of Signer(s)
personally appeared <u>Raudall</u> B	resee
	Name(e) of Signer(e) ne on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrume and acknowledged to me that he/she/they executed to same in his/her/their authorized capacity(ies), and that his/her/their signature(s) on the instrument the person( or the entity upon behalf of which the person(s) actor executed the instrument. WITNESS my hand and official seal. WITNESS my hand and official seal.
	Signature of Notary Public
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Title or Type of Document:Addle.cd  Document Date: Signer(s) Other Than Named Above:  Capacity(ies) Claimed by Signer(s)  Signer's Name: Individual  Corporate Officer  Title(s): Partner — I Limited [] General	Signer's Name: Individual Corporate Officer Title(s): Partner — I Limited I General
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Title or Type of Document:  Document Date: Signer(s) Other Than Named Above: Capacity(ies) Claimed by Signer(s) Signer's Name: Individual Corporate Officer Title(s): Partner Limited  General Attorney-in-Fact Trustee	Signer's Name:
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IN WITNESS WHEREOF, the parties hereto have executed this Intellectual Property Assignment as of the date first written above.

## ASSIGNEE:

CALDERA INTERNATIONAL, INC., a Delaware corporation

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By:	-					
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Its:						
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ASSIGNOR:

THE SANTA CRUZ OPERATION INC., a California corporation

BRASSEE By:\_ KANDALL. Its: CFO

STATE OF Calibonia 88. COUNTY OF Santa Cruz

On this 30th day of Am , in the year <u>200</u>, before me, the undersigned Notary Public, duly commissioned and sworn, personally appeared Raudal Presee, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Chief Financial Officer, on behalf of The Sonta Cone Operation, and acknowledged to me that Randell Bresse executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

[SEAL]



Notary Public in and for the aforesaid County and State

## SCHEDULE A ASSIGNED PATENT APPLICATION

## **Patent Application:**

U.S. Utility Patent Application entitled "Method and Apparatus for Executing Java Applications on a Single Java Virtual Machine," Application No. 09/464,352; Filed December 15, 1999.

## SCHEDULE B ASSIGNED TRADEMARKS AND TRADEMARK APPLICATIONS

Country	Trademark	<b>Registration Date</b>	Registration No.	Status/Class
Argentina	SCO	09/30/93	1472693	Registered 9
	SCO	06/30/94	1530433	Registered 42
	Open Desktop	(Applied for, filing date: 7/14/89, Application no. 1696846)	(Applied for)	Abandoned/9
Australia	Open Desktop	7/13/89	A514837	Abondoned/9 1996
	ODT	(Applied for, filing date: 7/22/91, Aplication no. 560086)	(Applied for)	Pending/9
	sco	09/05/01	563113	Registered/42
	sco	09/05/91	563112	Registered/9
	SCO and Design (Stylized Tree)	02/15/96	702508	Registered/9
	UNIXWARE	07/01/94	633864	Registered/9
Austria	Open Desktop	4/30/90	130350	Registered/9, 16, 36, 42 Do not renew instructions 1/5/2000
	sco	01/22/92	139950	Registered/9, 16, 36, 41, 42
Bangladesh	Open Desktop	09/30/91	33556	Registered/9 Renewal date 9/30/1998
	Open	09/30/91	33557	Registered/16

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•	Desktop			Renewal date 9/30/1998
	8CO	01/13/00	33554	Registered/9
	SCO	09/30/91	33557	Registered/16
	UNIXWARE	(Applied for, filing date: 9/17/94, Application no. 41673)	(Applied for)	(Applied for)
•	UNIXWARE	(Applied for, filing date: 9/17/94, Application no. 41672)	(Applied for)	(Applied for)
Benelux	Open Desktop	07/17/89	467837	Registered, 9, 16, 42 Do not renew instructions 3/23/99
	SCO	02/08/90	472347	Registered/9, 16, 41, 42
	SCO and Design (Stylized Tree)	02/14/86	587243	Registered/9, 16, 41
Bolivia	Open Desktop	10/02/90	50510C	Registered/9 Renewal Date 10/2/00
Brazil	Open Desktop	(Applied for, filing date: 7/24/89, Application No. 814975062)	(Applied for)	Abandoned/9 1996
	SCO and Design (Stylized Tree)	03/30/99	819433667	Registered/9, 40
	SCO	03/22/94	816968500	Registered/9
	sco	04/05/94	816966133	Registered/40

	Canada	Open Desktop	07/19/91	386744	Registered Renewal date 07/19/06
		Open Desktop And Design	(Applied for, filing date: 4/4/89, Application No. 623809)	(Applied for)	Abandoned/19 95
		SCO and Design (Stylized Tree)	02/29/96	475,359	Registered
		sco	04/23/96	411425	Registered
		SCO and Design	12/17/93	420940	Registered
	Chile	Open Desktop	02/26/92	382125	Registered/41, 42 Renewal date 02/26/02
<b>)</b>		Open Desktop	12/10/93	418111	Registered/9, 16 Renewal date 12/10/03
		SCO	5/17/89 (renewed 3/23/99)	342750	Registered/42
		sco	03/10/92	383070	Registered/4, 42
	China	Open Desktop	(Applied for, filing date: 9/17/92)	(Applied for)	Inactive/16
		Open Desktop	(Applied for, filing date 9/17/92)	(Applied for)	Inactive/9
		Design (Stylized Tree)	07/28/97	1065879	Registered/9
		UNIXWARE	08/07/96	860857	Registered/9
2	Columbia	Open Desktop	06/09/93	141336	Registered/9 Renewal date

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	,		· · · · · · · · · · · · · · · · · · ·	06/09/03
Costa Rica	Open Desktop	12/21/90	74001	Registered/9 Renewal Date 12/21/00
Denmark	Open Desktop	08/27/93	VR060871993	Registered/9 Renewal Date 08/27/03 To be abandoned
	UNIXWARE	06/24/94	41.125.1994	Registered/9
	SCO	10/30/92	VR100061992	Registered/9, 16, 41, 42
Ecuador	Open Desktop	06/20/90	310090	Registered/9 Renewal Date 06/20/05
El Salvador	Open Desktop	(Applied for, Application No. E163489)	(Applied for)	Abandoned/9 1996
	Open Desktop	(Applied for, Application No. E163589)	(Applied for)	Abandoned/16 1996
European Community	SCO and Design (Stylized Tree)	9/11/98	183129	Registered/9, 16, 42
	UNIXWARE	(Applied for, filing date: 4/1/96; Application no. 183103)	N/A	Opposed/9, 16, 41
Federal Republic of	UNIXWARE	5/12/93	203107	Registered/9, 16, 37, 38, 42
Germany	UNIXWARE (stacked)	06/17/93	2038592	Registered/9, 16, 37, 38, 42
	UNIXWARE	04/29/93	2035231	Registered/9, 16, 37, 38, 42
Finland	Open Desktop	01/20/95	135997	Registered/9, 16, 42 Renewal date 1/20/05

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	Open Desktop	(Applied for, filing date: 7/13/89, Application No. 353789)	(Applied for)	Abandoned/9 1996
<sup>an</sup>	SCO	12/21/92	123767	Registered/9, 16, 42
France	Open Desktop	07/27/89	1543525	Registerd/9, 16, 42 Do not renew instructions 3/23/99
	SCO	09/09/91	1692453	Registered/9, 16, 41, 42
	SCO	03/13/87	1398504	Registered/9, 42
Germany	Open Desktop	03/23/94	1189990	Registered/9, 16, 35, 42 Do not renew instructions 08/04/00
<u>.</u>	sco	03/01/90	1186634	Registered/9, 16, 41, 42
Greece	Open Desktop	07/12/89	94650	Registered/9, 16 Renewal date 07/12/99
Guatemala	Open Desktop	10/24/90	63279	Registered/9 Renewal date 10/24/00
Hong Kong	SCO and Design (Stylized Tree)	02/24/96	5080/97	Registered/9
	sco	09/11/91	1108/94	Registered/9
	SCO	09/11/91	879/93	Registered/10
Indonesia	Open Desktop	03/23/92	273226	Registered/9 16 Renewal date 03/23/02
	UNIXWARE	08/28/95	360559	Registered/9

		•	•	
	SCO	1/24/95	327021	Registered/9
	SCO	(Applied for, filing date: 9/30/93, Application no. HC010114085A)	333456	(Applied for)
International Bureau	SCO	07/15/87	516330	Registered/9, 42
Ireland	Open Desktop	05/31/93	140756	Abandoned/9 1/23/96
	sco	09/05/91	146285	Registered/9
Israel	Open Desktop	(Applied for, filing date 9/16/91, Application no. 80953)	(Applied for)	Abandoned/9 12/23/96
	Open Desktop	(Applied for, filing date 10/12/94, Application no. 95553)	(Applied for)	Abandoned/9 12/23/96
Italy	Open Desktop	01/29/92	558705	Registered/9, 16, 36, 42 Renewal date 7/26/99
	UNIXWARE	12/02/93	678741	Registered/9
	SCO	03/02/94	615327	Registered/9, 16, 41, 42
Japan	Open Desktop	05/31/93	2538133	Registered/11 Renewal date 05/31/03
· ·	Open Desktop	05/21/93	2538133	Registered/11 Renewal date 05/31/03 Do not renew instructions 3/23/99
	ODT	2/28/95	2704134	Registered/11 Renewal Date 2/28/05
	Open	(Applied for, filing	(Applied for)	Abandoned/1

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	Desktop in Katakana	date 12/12/90, Application no. HEI2138270)	· · · ·	
	SCO and Design (Stylized Tree)	10/09/98	4197569	Registered/9
	UNIXWARE	03/21/99	4,273,396	Registered
	sco	6/27/97	3325688	Registered/42
• • •	sco	02/24/93	2610962	Registered/11
Korea (North)	Open Desktop	02/22/91	210102	Registered/39 Renewal date: 02/22/01 Do not renew instructions 1/23/96
Korea (South)	SCO and Design (Stylized Tree)	11/01/97	380641	Registered/9
Malaysia	Open Desktop	(Applied for, filing date 7/26/89, Application No. 8904470)	(Applied for)	Abandoned/9 1/23/96
Mexico	ODT	3/14/91	433850	Registered/9 Renewal Date 3/14/01
	Open Desktop	07/25/94	382323	Registered/ 1,6,8,9,11, 12,14,16 Renewal date 07/25/04
	SCO and Design (Stylized Tree)	(Applied for, filing date 02/20/96, Application no. 254919)	(Applied for)	Filed/9
	UNIXWARE	(Applied for, filing date: 12/10/93, Application no.	(Applied for)	Filed/9

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		185653)		
	SCO	3/14/91 renewal filed on 10/2/2000)	399947	Registered/9
•	SCO	10/15/91 (renewal filed on 11/22/2000)	400984	Registered/42
	sco	03/14/91 (renewal field on 10/2/2000)	399948	Registered/16
New Zealand	Open Desktop	(Applied for, filing date: 7/10/89, Application no.	(Appiled for)	Abandoned/9 1/23/96
		194555)		
	sco	02/09/96	A212704	Registered/9
	UNIXWARE		239501	Registered/9
Norway	Open Desktop	10/31/91	147391	Registered/9, 16, 42 Renewal date 10/31/01 To be abandoned
	SCO	01/14/93	154571	Registered/9, 16, 42
	UNIXWARE		169 934	Registered/9
Pakistan	Open Desktop	(Applied for, filing date 12/4/91, Application no. 113420)	(Applied for)	Abandoned/9 1/23/96
	SCO ·	11/29/99	113421	Registered/9
	SCO	(Application filed, filling date:	(Application filed)	(Pending – published on
·		12/04/91, Application No. 113422)	•	2/28/97)
Paraguay	Open Desktop	12/18/89	137959	Registered/9 Renewal date 12/18/99
Peru	Open Desktop	(Applied for, filing date 8/4/89,	(Applied for)	Rejected

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		Application no. 157636)		
Portugal	Open Desktop	12/10/92	257352	Registered/9 Renewal Date 12/10/02
• . · ·	SCO	08/17/93	278165	Registered/9
	sco	09/20/93	278743	Registered/42
Russia	Open Desktop	10/16/92	40861-	Registered/9 Renewal Date 10/09/01
	sco	10/09/91	109157	Registered/9
Singapore	Open Desktop	3/16/89	A453989	Abandoned/9 1/23/96
	ODT	(Applied for, filing date 2/28/91, Application no. 128891)	(Applied for)	Abandoned/9
	sco	02/28/91 (renewed 2/28/98)	128991	Registered/9
	sco	(Application filed on 2/28/91, Application No. 129091)	(Applied for)	(Pending/16
	sco	03/01/91	218291	Registered/42
South Africa	Open Desktop	08/02/89	B896925	Registered/9 Renewal Date 08/02/99 Not renewed
Spain	Open Desktop	(Applied for, filing date 7/27/89, Application no. 1514081)	(Applied for)	Abandoned/9 1/23/96
	UNIXWARE	12/05/95	1737324	Registered/9
	SCO	02/20/90 (application renewed until	1550163	Registered/9

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		SCO	06/03/93	1667248	Registered/42
	Sri Lanka	Open Desktop	11/08/91	62566	Registered/9 Renewal Date 11/08/01
		SCO	05/23/95	62568	Registered/9
		sco	11/08/91	62569	Registered/42
	Sweden	Open Desktop	07/23/93	250260	Registered/9, 16, 42 Renewal Date 07/23/03
		UNIXWARE	04/29/94	257804	Registered/9
		SCO	05/14/93	249102	Registered/9, 41, 42
	Switzerland	Open Desktop	07/11/89	374836	Registered/9, 6 Renewal Date 7/11/09
1		sco	09/05/91	392642	Registered/9, 16
	Taiwan	Open Desktop	09/16/90	498741	Registered/72 Renewal Date 09/15/00
		ODT	10/16/91	538693	Registered/49 Renewal Date 9/15/00
		ODT .	11/16/91	542354	Registered/72 Renewal Date 11/15/01
•		SCO and Design (Stylized Tree)	03/16/97	753030	Registered/9
		SCO	01/16/92 renewal filed 7/7/99	548772	Registered/72
2	-	sco	10/16/91 renewal	538736	Registered/49

CONFIDENTIAL

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		filed 7/7/99	<u> </u>	<u> </u>
Thailand	Open Desktop	03/17/92	KOR272	Registered/9 Renewal Date 03/17/02
	SCO	06/30/93	KOR3310	Registered/9
	sco	06/30/93	KOR3321	Registered/16
Turkey	Open Desktop	07/18/89	113450	Registered/9, 16 Renewal Date 07/18/99 Not Renewed
United Kingdom	Open Desktop	(Applied for, filing daet: 1/27/89, Application no. 1390250)	1/27/89	Abandoned/9 1/23/96
	Open Desktop	03/09/91	B1457899	Registered/9 Renewal Date 03/09/98 Do not renew instructions 1/4/95
	UNIXWARE	09/22/93	1,548,436	Registered/9
	SCO -	09/17/91 (renewed through 9/17/2008)	1477302	Registered/9
,	sco	9/17/91 (renewed through 9/17/2008)	1477303	Registered/42
United States	Open Desktop	2/6/90	1581180	Abandoned/9 1/23/96
	Open Desktop	03/20/90	1587521	Registered/9 Renewal Date 03/20/90 Do not renew isntructions 1/4/95
· .	UNIXWARE	07/19/94	1,845,474	Registered/9
	UNIXWARE	07/27/99	2,241,666	Registered/9
	SCO and	05/27/97	2,064,732	Registered/9

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-	Design (Stylized Tree)			
	SCO	01/23/90 (request for renewal sent 1/4/00)	1578766	Registered/9, 16, 41,42
Uruguay	Open Desktop	04/03/92	231681	Registered/9, 16, 42 Renewal Date 04/03/02
Venezuela	Open Desktop	(Applied for, filing date 8/7/89, Application no. 011681)	(Applied for)	Abandoned/50 1/23/96

## SCHEDULE C ASSIGNED COPYRIGHTS AND TECHNOLOGY

Copyrights

#### Source Code Products: A.

UnixWare 7 Source Code product family as described in SCO's UnixWare 7 Licensing Schedules.

UnixWare 2 product family as described in SCO's UnixWare 2 Licensing Schedules.

UnixWare 1.1 as described in the UnixWare 1.1 Licensing Schedule.

UNIX SVR4.2MP as described in the UNIX SVR4.2MP Licensing Schedule and those products listed as "prior" products on such schedule.

UNIX SVR4.2 as described in the UNIX SVR4.2 Licensing Schedule and those products listed as "prior" products on such schedule.

UNIX SVR4.1 ES as described in the UNIX SVR4.1 ES Licensing Schedule and those products listed as "prior" products on such schedule.

UNIX SVR4.0MP as described in the UNIX SVR4.0 MP Licensing Schedule and those products listed as "prior" products on such schedule.

Auxiliary SVRx Products as set forth in Schedule 1 attached hereto.

#### В. **Binary Products:**

UnixWare 7 product family as described in SCO's price list attached hereto. UnixWare 7 NonStop Clusters as described in SCO's price list attached hereto. UnixWare 2 product family as described in SCO's price list attached hereto. UnixWare 1.1 product family, including UnixWare 1.1.x update releases.

### C. **Products Under Development:**

UnixWare 7.1.1 Media Kit Refresh ("Binary Roll-up").

UnixWare 7.1.1 Feature Supplements for UDI, UODK, and DCAP UnixWare 7.1.2 Maintenance Release.

UnixWare 7.2 Upgrade Release - Code Named Aries. Linux Personality for UnixWare7 - Code Named LKC. UnixWare 7 NonStop Clusters Release 7.1.1C.

## Other Technology

UnixWare system/HBA/etc. Test/Certification Suites UnixWare "OS Branding" Test Suites UnixWare "OS Compatible" Requirements

Gaede Performance Test Suite

ARTUS, Bart, Buster International UNIX Test Suite and test harnesses

Requirements, Design, and Test Specifications for UnixWare 2

Technical Support Update Manager

Marketing collateral/information in electronic form

ODI transmogrification software

Perk up technology

OpenServer Products: all software, development tools, compilers, libraries, driver kits, utilities, and the operating system software and other products in whole or in part based on or developed from or for the AT&T Unix System V version 3.2 kernel and any successor to that kernel, including the kernel, the code base, the application program interfaces, the application binary interfaces, derivative works thereof, and those products offered under the names or marks "Appliance Server", SCO Admin, SCO OpenServer Enterprise System, SCO OpenServer Host System, SCO OpenServer Internet FastStart System, or SCO OpenServer Desktop System, SCO Virtual Disk Manager, SCO Doctor, SCO ARCserve/Open, SCO Merge, SCO OpenServer SMP<sup>™</sup> Licenses, SCO PPP from Morning Star, SCO Internet Security Package, SCO Internet to NetWare Gateway, and Interscan VirusWall, and all successors, upgrades, enhancements, releases, new versions, and updates to any of the above that have been developed or acquired by the Contributing Companies as of the Effective Time, as defined in the Reorganization Plan.

## D. Auxiliary SVRx Products

Open Network Computing+

386 Implementation of UNIX System V Release 4 Multi-National Language Supplement
386 Implementation of UNIX System5 Release 4 Multi-National Language Supplement
3B2 Implementation of UNIX System5 Release 4 Multi-National Language Supplement
Application Source Verifier Release 2.0

Artus

C Compilation System for Motorola 68000

C Optimized Compilation System for UNIX System 5 386/486

C++ Documents

C++ Language System Release 2.1

C++ Language System Release 3.0 and 3.0.1

C++ Language System Release 3.0.2

C++ Language System Release 3.0.3

C++ Object Interface Library Release 1.1

C++ Standard Components Release 2.0

C++ Standard Components Release 2.0.1

C++ Standard Components Release 3.0

C++ Standard Libraries Release 2.0

C++ Standard Libraries Release 3.0

C++ Standard Libraries Extension Release 1.0

C++LS 2.0

C++Translator

CFRONT Release 1.2

Chinese System Messages Implementation of UNIX System V Release 4 System Messages Distributed Manager/Framework & Host Manager Release 1.0

Distributed Manager/Framework & Host Manager Technology Licensing Program 1

Distributed Manager/Framework & Host Manager U.I. Early Access

Distributed Manager/Print Manager Release 1.0

Distributed Manager/Print Manager Technology Licensing Program 1

Distributed Manager/Print Manager Technology Licensing Program 1

Distributed Manager/Print Manager U.I. Early Access

DM/SM-TLPI

Documentation Reproduction Provision-UNIX System V Handbook Documentation Reproduction Provision-UNIX System V Programming Books Documentation Reproduction Provision-UNIX System V Reference Books Documentation Reproduction Provision-UNIX System V Users and Administrators Books European Supplement Release 3.2

European System Messages Release 3.2

French Application Environment 1.0/3b2

French System Messages Implementation of UNIX System V Release 4 System Messages French System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages

German Application Environment

German System Messages Implementation of UNIX System V Release 4 System Messages German System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages

Hindi System Messages Implementation of UNIX System V Release 4 System Messages Intel386 Microprocessor Implementation of VERITAS File System (VxFS) Release 1.0 Intel386 Microprocessor Implementation of VERITAS Visual Administrator Release 1.01 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.01 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.01 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.11 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.11 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.11 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.11 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.11

Italian System Messages Implementation of UNIX System V Release 4 System Messages Japanese Application Environment I/O Rel 1.0

Japanese Application Environment Release 2.0

Japanese Application Environment Release 2.0

Japanese Application Environment Release 2.1

Japanese Application for SVR4.2

Japanese Extension Implementation of UNIX System V Release 4.2

Japanese I/O Release 1.0

Japanese System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages

Japanese System Messages Release 3.2

Korean System Messages Implementation of UNIX System V Release 4 System Messages Optimizing C Compiler for Intel, Release 3.0

Spanish System Messages Implementation of UNIX System V Release 4 System Messages Spanish System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages

System V Release 2.0 Machine Readable Documentation

System V Release 3.0 Documentation Reproduction Provision

System V Release 3.1 Documentation Reproduction Provision

System V Release 3.2 Documentation Reproduction Provision

System V Verification Suite Release 2

System V Verification Suite Release 3

System V Verification Suite Release 4

UNIX System V French System Messages Release 3.2

UNIX System V German System Messages Release 3.2

UNIX System V Release 1.0 for 3B2 Multi-National Language Supplement

UNIX System V Release 1.0 for Intel 386 Multi-National Language Supplement

UNIX System V Release 3.2 386 Documentation Reproduction Provision

UNIX System V Release 3.2 for Intel 386 Multi-National Language Supplement

UNIX System V Release 3.2 for Intel 386 Multi-National Language Supplement UNIX System V Release 3.2 Multi-National Language Supplement

UNIX System V Release 4 European Language Supplement

UNIX System V Release 4 STREAMS-Based Korean Input/Output Subsystem

UNIX System V Release 4.0 386 Documentation Reproduction Provision

UNIX System V Release 4.0 3B2 Documentation Reproduction Provision

UNIX System V Release 4.0 i860 Documentation Reproduction Provision

UNIX System V Release 4.2 European Language Supplement, Version 1

UNIX System V Release 4.2 MP Japanese Extension

UNIX Time Sharing Operating System Phototypesetter and C Compiler Edition #7 USL Standard C Development Environment for the 860 Implementation of UNIX System V Release 4.0

Veritas File System (VxFS) Release 1.3 for UNIX System V Release 4.2

XWIN Graphical Windowing System Release 3.0

XWIN Graphical Windowing System Release 4.0

XWIN Graphical Windowing System Release 4.01

## [SEE TAB NUMBER 6 EXHIBIT C]

## **EXHIBIT 17**

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Stuart Singer (admitted pro hac vice) BOIES, SCHILLER & FLEXNER LLP 401 East Las Olas Blvd. Suite 1200 Fort Lauderdale, FL 33301 Telephone: (954) 356-0011 Facsimile: (954) 356-0022

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

THE SCO GROUP, INC., a Delaware corporation, Plaintiff/Counterclaim-Defendant,

vs.

## **DECLARATION OF TROY KELLER**

Civil No.: 2:04CV00139

NOVELL, INC., a Delaware corporation, Defendant/Counterclaim-Plaintiff.

Judge Dale A. Kimball Magistrate Judge Brooke C. Wells I, Troy Keller, declare as follows:

- I submit this declaration in connection with <u>The SCO Group v. Novell, Inc.</u>, Civil Action No. 2:04CV00139 DAK (D. Utah 2004), and <u>The SCO Group, Inc. v. International</u> <u>Business Machines Corporation</u>, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003). I make this declaration based upon personal knowledge.
- I am an attorney licensed to practice in New York and Colorado and now live and work in Utah.
- 3. In 2000 and 2001, I was employed as an attorney at the law firm of Brobeck, Phleger & Harrison ("Brobeck") in its Broomfield, Colorado office. I was also a member of the Brobeck legal team representing Caldera Systems, Inc. ("Caldera") in its acquisition of two divisions of The Santa Cruz Operation, Inc. ("Santa Cruz") comprising the UNIX and UnixWare business. I was involved on a regular and continuing basis in the acquisition on behalf of the acquiring Caldera entities, but I did not have primary responsibility for intellectual property issues in the transaction. However, I did participate in many discussions of intellectual property matters with IP specialists on both sides of the transaction.
- 4. As part of the transaction, Caldera merged with the two divisions it acquired from Santa Cruz, forming a new entity named Caldera International. In connection with the acquisition, Santa Cruz transferred and conveyed to Caldera International all the intellectual property associated with the UNIX and UnixWare technology, including the UNIX and UnixWare copyrights, through an Intellectual Property Assignment executed by Santa Cruz and Caldera International on May 7, 2001. (Attached as Exhibit A, hereto.)

- 5. In performing due diligence for the transaction, I, along with other members of the Brobeck team reviewed, among other things, the 1995 Asset Purchase Agreement between Santa Cruz and Novell, Inc. ("Novell"), whereby Santa Cruz had acquired the UNIX and UnixWare business and assets from Novell (the "APA"). We also reviewed Amendments Nos. 1 and 2 to the APA.
- 6. After review of the APA and Amendment No. 2 thereto, the transaction team, including the Brobeck lawyers, lawyers from Parsons, Behle & Latimer ("PB&L"), which also represented the Caldera entities, in house counsel for the Caldera entities, and in house counsel for Santa Cruz, and Wilson Sonsini discussed and concluded that Santa Cruz had acquired the ownership of the UNIX and UnixWare copyrights (including those that came to be listed on Schedule C to the May 2001 IP Assignment) from Novell under the APA in 1995, as amended, and that Santa Cruz consequently had the ownership, right and authority to transfer the ownership of those copyrights as part of the Intellectual Property Assignment in 2001.
- For the sale from Santa Cruz to Caldera, which was closed in May 2001, Santa Cruz was represented by Wilson Sonsini Goodrich & Rosati, ("WSGR"), and Caldera (including Caldera International) was represented by Brobeck and PB&L.
- 8. To my knowledge, during the negotiations between Santa Cruz and Caldera in 2000 and 2001, and during the communications between Brobeck and PB&L and WSGR in performing due diligence for the transaction, neither the WSGR attorneys nor representatives from Santa Cruz ever stated or suggested that Novell had retained

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ownership of the UNIX and UnixWare copyrights under the APA or that Santa Cruz lacked the authority to transfer ownership of those copyrights to Caldera International.

- 9. On the contrary, the WSGR attorneys reviewed, approved, and helped draft the Intellectual Property Assignment, wherein Santa Cruz expressly represented and warranted that it had the power, authority, and rights to transfer ownership of the UNIX and UnixWare copyrights, and Santa Cruz expressly transferred and conveyed those copyrights to Caldera International. (Ex. A § 1, § 8(i).)
- 10. In Section 8(v) of the Intellectual Property Assignment, Santa Cruz also represented that it had no knowledge of any fact that would prevent Caldera International from registering the rights it acquired under the Intellectual Property Assignment. During the due diligence process, a question arose regarding the copyright registrations and the location of the registration certificates and whether certain UNIX copyrights had been previously registered in the name of The Santa Cruz Operation, Inc. The parenthetical language in Section 8 (v) relates only to the question about the location and transfer of the copyright registrations. That language does not relate to, and was not intended to relate to Santa Cruz's ownership of the copyrights, Novell's sale of the UNIX and UnixWare copyrights to Santa Cruz or Santa Cruz's power, authority, and right to transfer those copyrights to Caldera International.
- 11. If anyone on either of the transaction teams had offered an opinion that the Santa Cruz Operation, Inc. had not previously acquired ownership of the relevant UNIX and UnixWare copyrights from Novell or did not have the right to transfer the ownership of those copyrights to the Caldera entities, it is unlikely that the transaction would have gone

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forward as planned or it would have been structured very differently. At a minimum, there would have been more specific and clear documentation of that lack of ownership to the core assets that were being transferred. This would have likely included material changes to the Intellectual Property Assignment, including clear language calling out the lack of ownership in at least paragraphs 1 and 8(i) and (ii) and on Schedule C and possibly other approaches.

12. Based upon my interaction and discussion with members of the teams on both sides of the transaction in 2001, it was not my understanding then and it is not my understanding now that the parenthetical in paragraph 8 (v) of the Intellectual Property Assignment somehow negates or overrides the transfer of the ownership of the UNIX and UnixWare copyrights, or other assets, listed and referenced on Schedule C.

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

May /P , 2007

rov Keller

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## INTELLECTUAL PROPERTY ASSIGNMENT

THIS INTELLECTUAL PROPERTY ASSIGNMENT (this "Assignment") is made as of May 1, 2001 (the "Effective Date") by and between The Santa Cruz Operation, Inc. a California corporation having its principal place of business at 425 Encinal Street, Santa Cruz, California 95060 (the "Assignor") and Caldera International, Inc. a Delaware corporation having its principal place of business at 240 West Center Street, Orem, Utah 84057 (the "Assignee").

WHEREAS, Assignor and Assignee are parties to the Agreement and Plan of Reorganization, dated August 1, 2000, and amended September 13, 2000, December 12, 2000 and February 9, 2001 (collectively, the "Reorganization Plan"), which requires the execution of Ancillary Agreements, including an intellectual property assignment.

WHEREAS, Assignor has developed, created, written, and/or acquired certain inventions, patent application, trade secrets, trademarks and trademark applications, designs, products, processes and works of authorship prior to the Effective Date, including but not limited to, the software code, inventions, trade secrets, trademarks and trademark applications designs, products, processes and works of authorship listed in <u>Schedules A-C</u> attached hereto (the "Inventions and Works") (which do not include the Excluded Assets, as defined in the Reorganization Plan, and any intellectual property rights appurtenant thereto);

WHEREAS, Assignor owns certain rights, title and interest to the Invention and Works and patent rights, trade secret rights, trademarks, copyrights, design rights and other rights throughout the world appurtenant or related thereto, including certain rights to recover for past infringement of such rights;

WHEREAS, Assignee is desirous of acquiring all rights, title and interest in and to the Inventions and Works, pursuant to the Reorganization Plan; and

WHEREAS, Assignor retains a license to use the SCO and SCO and design trademarks and the UNIX, Unix Ware and SCO OpenServer technology as set forth herein.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged by Assignor, the parties hereby agree as follows:

1. <u>Assignment</u>. Assignor hereby assigns, transfers and conveys to Assignee, and Assignee accepts, all of Assignor's right, title, and interest throughout the world in and to the Inventions and Works, including, but not limited to, any of the following appurtenant or related to the Inventions and Works: (i) all patents and patent applications and any and all patents that are or may be granted therefrom whether in the United States or any other country, including, without limitation, any extensions, continuations, continuations-in-part, divisions, reissues, reexaminations, and renewals thereof, or other equivalents thereof; (ii) all copyrights and all necessary and appropriate renewals and extensions thereof (iii) all trademarks, service marks, trade names, domain names, logos, trade dress, get up and product aesthetic features, including,

without limitation, all registrations, applications for registration and common law rights thereto and all goodwill associated therewith; (iv) all design rights, whether registered, unregistered, patented, patentable or otherwise; (v) all trade secret rights and rights to enforce confidentiality or similar obligations in relation to the Inventions and Works; (vi) any and all other forms of intellectual property or proprietary right recognized anywhere in the world; and (vii) all rights and privileges pertaining to (i) through (vi), including without limitation, the right, if any, to sue or bring other actions for past, present and future infringement thereof ((i) through (vii) hereinafter collectively referred to as the "Rights"). Notwithstanding the foregoing, Assignor retains a perpetual, non-transferable, non-sublicensable, royalty free, license back to use the SCO and SCO and design trademarks without attribution to Caldera, to the extent that Assignor enjoyed such rights prior to entering into the Reorganization Plan; and Assignor retains i) a perpetual, non-transferable, non-sublicensable, royalty free license back of the UNIX, UnixWare and SCO Open Server source code for Assignor's internal business use only, and ii) a perpetual, non-transferable, non-sublicensable, royalty free license to any future enhancements (meaning bug fixes, patches and any minor modifications) for a period of five years, for Assignor's internal business use only.

2. <u>Protection</u>. Assignor further hereby assigns to and empowers Assignee, its successors, assigns or nominees, all rights to make applications for patents, copyright, trademark or design registrations or other forms of protection for the Inventions and Works and to prosecute such applications as well as to claim and receive the benefit of the right of priority provided by the International Convention for the Protection of Industrial Property, as amended, or by any convention that may henceforth be substituted for it, and the right to invoke and claim such right of priority without further written or oral authorization.

3. <u>Authorization to Record</u>. Assignor further agrees that this Assignment shall be deemed a full legal and formal equivalent of any assignment, consent to file or like document that may be required in any country for any purpose regarding the subject matter hereof, as well as constituting proof of the right of Assignee or its successors, assigns or nominees to apply for patent, copyright, trademark or design or other protection for the Inventions and Works and to claim the aforesaid benefits of the right of priority provided by the International Convention for the Protection of Industrial Property, as amended, or by any convention that may henceforth be substituted for it.

4. <u>Delivery</u>. Assignor agrees to deliver promptly to Assignee all the tangible examples reasonably requested by Assignee in Assignor's possession and all prototypes of the Inventions and Works held by Assignor as of the Effective Date.

5. <u>Further Assurances</u>. Assignor further agrees that Assignor will: (a) cooperate with Assignce's reasonable requests in the prosecution of patent, copyright, trademark or design applications on the Inventions and Works; (b) execute, verify, acknowledge and deliver all such reasonably required further papers, including applications and instruments of transfer; and (c) perform such other acts as Assignee lawfully and reasonably may request to obtain, maintain, defend or enforce Rights for the Inventions and Works any and all countries, and to vest title thereto in Assignee, or Assignee's successors and assigns. In the event that Assignee is unable to to secure Assignor's signature to any document it is reasonably entitled to hereunder, after making a reasonable effort to secure such signatures, Assignor hereby irrevocably designates and appoints Assignee and its duly authorized officers and agents, as its agents and attorneys-in-fact to act for and on its behalf and instead of it, to execute and file any such document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Assignor.

6. <u>Moral Rights</u>. Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, Assignee hereby waives such Moral Rights. Assignee shall confirm any such waivers and consents from time to time as requested by the Assignor.

7. <u>Confidentiality</u>. Assignor hereby acknowledges and agrees that as of the Effective Date of this Assignment, the Inventions and Works, the Rights related or appurtenant thereto, and fact and terms and conditions of this Agreement are confidential and proprietary information of Assignee and Assignor may not use or disclose such information to any third party upon or after the Effective Date.

8. <u>Representations and Warranties</u>. Assignor hereby represents and warrants to Assignee the following:

(i) Assignor has the full power, authority and all rights necessary to transfer and assign Assignor's Rights in the Inventions and Works to Assignee and to carry out the terms and provisions of this Agreement;

(ii) Assignor's Rights in the Inventions and Works has not heretofore been pledged, hypothecated or otherwise encumbered and is, in all respects, free and clear of all encumbrances including, without limitation, interests, claims, options, prior assignments, licenses, leases, liens, charges or any other restrictions of any nature whatsoever; except for a security interest in all of the assets of Assignor, including the Inventions and Works, by The Canopy Group, filed with the California Secretary of State on January 12, 2001; and except for the pending opposition action against the UnixWare trademark in the EU.

(iii) By making this assignment Assignor will not breach any obligation to any third party under contract or otherwise;

party;

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(iv) The Inventions and Works do not infringe the Rights of any third

parcy,

(v) Assignor has no knowledge of any fact that would prevent Assignee's registration of any Rights related or appurtenant to the Inventions and Works or recording the transfer of Rights hereunder (except that Assignor may not be able to establish a chain of title from Novell Inc. but shall diligently endeavor to do so as soon as possible); and (vi) Assignor will not in the future register the Inventions and Works or any of the Rights related or appurtenant to the Inventions and Works.

Assignor agrees to defend and indemnify Assignee from and against any liabilities, claims, actions, demands or damages including, without limitation, reasonable attorneys' fees and costs arising from any breach of any of the foregoing warranties.

9. <u>Miscellaneous</u>. The waiver by either party of any breach of this Agreement or any right hereunder shall not constitute a waiver of any subsequent breach of this Agreement; nor shall any delay by either party to exercise any right under this Agreement operate as a waiver of any such right. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement, Any party to this Agreement that takes steps to enforce the terms of this Agreement shall be entitled to reimbursement of any costs and expenses (including reasonable attorneys' fees) in the event of any such action. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of New York and the United States America without regard to conflicts of laws provisions thereof. The parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications, if any, relating to the subject matter of this Agreement. This Agreement shall be binding on the parties' respective heirs, executors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Intellectual Property Assignment as of the date first written above.

# **ASSIGNEE:**

CALDERA INTERNATIONAL, INC., a Delaware corporation

By: KOBERT EN/10 Its: VP C

# **ASSIGNOR:**

THE SANTA CRUZ OPERATION INC., a California corporation

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By:	
Tea.	
Its:	
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and Cult	
State of <u>California</u>	
County of Santa Guz	
On April 30 2001 before m	10, Naucy Valek-Confaett, Notzny Put
personally appeared <u>Raudall</u>	Bresee
	ne on the basis of satisfactory evidence to be the person(s whose name(s) is/are subscribed to the within instrumer and acknowledged to me that he/she/they executed th same in his/her/their authorized capacity(ies), and that b his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted
2013 North and 1222405 2	executed the instrument.
South Collection	WITNESS-my hand and official seal.
My Convol Equation Aug 27/2018	
	The Hallemet
	Signature of Notary Public
(	OPTIÓNAL
<ul> <li>Though the information below is not required by law, it may</li> </ul>	ay prove valuable to persons relying on the document and could preven
fraudulent removal and reat	ay prove valuable to persons relying on the document and could preven tachment of this form to another document.
Title or Type of Document:	nal Property Assignment - scol
Title or Type of Document:	tachment of this form to another document.
Traudulent removal and reate         Description of Attached Document         Title or Type of Document:         Document Date:         Signer(s) Other Than Named Above:	tachment of this form to another document.
Title or Type of Document:	tachment of this form to another document.
Traudulent removal and reate         Description of Attached Document         Title or Type of Document:         Document Date:         Signer(s) Other Than Named Above:	tachment of this form to another document.
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Image: Comparison of Attached Document         Title or Type of Document:         Title or Type of Document:         Document Date:         Signer(s) Other Than Named Above:         Capacity(les) Claimed by Signer(s)         Signer's Name:         Individual         Corporate Officer	Lachment of this form to another document.   Imal Preperty Assignment - Scold
Title or Type of Document:  Document Date: Signer(s) Other Than Named Above: Capacity(les) Claimed by Signer(s) Signer's Name: Individual Corporate Officer Title(s):	Lachment of this form to another document.   Imal Preperty Assignment - Scolution
Image: Signer(s) Other Than Named Above:         Capacity(ies) Claimed by Signer(s)         Signer's Name:         Individual         Corporate Officer         Title(s):         Occurrent	Lachment of this form to another document.   Image: Constraint of this form to another document.     Image: Constraint of Pages:
Individual   Individual <td>Lachment of this form to another document.   Imal Property Assignment - Scolute  </td>	Lachment of this form to another document.   Imal Property Assignment - Scolute
Traudulent removal and reate Description of Attached Document Title or Type of Document:	Signer's Name: Individual Corporate Officer Title(s): Partner Limited I General Attorney-in-Fact Trustee
Title or Type of Document:   Title or Type of Document:   Document Date:   Signer(s) Other Than Named Above:   Capacity(les) Claimed by Signer(s)   Signer's Name:   Individual   Corporate Officer   Title(s):   CFO   Partner — I Limited I General   Attorney-in-Fact	Signer's Name:
Title or Type of Document:   Document Date:   Signer(s) Other Than Named Above:   Capacity(ies) Claimed by Signer(s)   Signer's Name:   Individual   Corporate Officer   Title(s):   Partner   Limited I General   Attorney-in-Fact   Guardian or Conservator	Signer's Name:
Title or Type of Document:   Document Date:   Signer(s) Other Than Named Above:   Capacity(ies) Claimed by Signer(s)   Signer's Name:   Individual   Corporate Officer   Title(s):   Partner   Limited I General   Attorney-in-Fact   Guardian or Conservator	Signer's Name:
Title or Type of Document:   Document Date:   Signer(s) Other Than Named Above:   Capacity(ies) Claimed by Signer(s)   Signer's Name:   Individual   Corporate Officer   Title(s):   Partner   Limited I General   Attorney-in-Fact   Guardian or Conservator	Signer's Name:
Title or Type of Document:   Title or Type of Document:   Document Date:   Signer(s) Other Than Named Above:   Capacity(ies) Claimed by Signer(s)   Signer's Name:   Individual   Corporate Officer   Title(s):   Partner	Signer's Name: Individual Corporate Officer Title(s): Partner
Title or Type of Document:   Title or Type of Document:   Document Date:   Signer(s) Other Than Named Above:   Capacity(ies) Claimed by Signer(s)   Signer's Name:   Individual   Corporate Officer   Title(s):   Partner	Signer's Name: Individual Corporate Officer Title(s): Partner

IN WITNESS WHEREOF, the parties hereto have executed this Intellectual Property Assignment as of the date first written above.

# ASSIGNEE:

CALDERA INTERNATIONAL, INC., a Delaware corporation

	•
	•
By:	
Its:	

# **ASSIGNOR:**

THE SANTA CRUZ OPERATION INC., a California corporation

By:\_ ANDALL. SROSGE Its: CFO

STATE OF California 88. COUNTY OF Soula Cruz

On this <u>20</u><sup>th</sup> day of <u>A</u><u>m</u>, in the year <u>200</u>, before me, the undersigned Notary Public, duly commissioned and sworn, personally appeared <u>Paudal</u> <u>Presee</u>, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as <u>Chief Fenancial Officer</u>, on behalf of The <u>Sanha Care Operator</u>, and acknowledged to me that <u>Paudal</u> <u>Presee</u> executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

[SEAL]

NANCY VALEK-CORBE Commission # 1232405 olary Public =

Notary Hublic in and for the aforesaid County and State

# SCHEDULE A ASSIGNED PATENT APPLICATION

# **Patent Application:**

U.S. Utility Patent Application entitled "Method and Apparatus for Executing Java Applications on a Single Java Virtual Machine," Application No. 09/464,352; Filed December 15, 1999.

# SCHEDULE B ASSIGNED TRADEMARKS AND TRADEMARK APPLICATIONS

:

Country	Trademark	<b>Registration</b> Date	Registration No.	Status/Class
Argentina	SCO	09/30/93	1472693	Registered 9
•	sco	06/30/94	1530433	Registered 42
	Open Desktop	(Applied for, filing date: 7/14/89, Application no. 1696846)	(Applied for)	Abandoned/9
Australia	Open Desktop	7/13/89	A514837	Abondoned/9 1996
·	ODT	(Applied for, filing date: 7/22/91, Aplication no. 560086)	(Applied for)	Pending/9
	sco	09/05/01	563113	Registered/42
	sco	09/05/91	563112	Registered/9
	SCO and Design (Stylized Tree)	02/15/96	702508	Registered/9
	UNIXWARE	07/01/94	633864	Registered/9
Austria	Open Desktop	4/30/90	130350	Registered/9, 16, 36, 42 Do not renew instructions 1/5/2000
	sco	01/22/92	139950	Registered/9, 16, 36, 41, 42
Bangladesh	Open Desktop	09/30/91	33556	Registered/9 Renewal date 9/30/1998
	Open	09/30/91	33557	Registered/16

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$\mathbf{O}$		Desktop	-		Renewal date 9/30/1998
		sco	01/13/00	33554	Registered/9
		SCO	09/30/91	33557	Registered/16
		UNIXWARE	(Applied for, filing date: 9/17/94, Application no. 41673)	(Applied for)	(Applied for)
•		UNIXWARE	(Applied for, filing date: 9/17/94, Application no. 41672)	(Applied for)	(Applied for)
· 	Benelux	Open Desktop	07/17/89	467837	Registered, 9, 16, 42 Do not renew instructions 3/23/99
		SCO	02/08/90	472347	Registered/9, 16, 41, 42
	-	SCO and Design (Stylized Tree)	02/14/86	587243	Registered/9, 16, 41
	Bolivia	Open Desktop	10/02/90	50510C	Registered/9 Renewal Date 10/2/00
	Brazil	Open Desktop	(Applied for, filing date: 7/24/89, Application No. 814975062)	(Applied for)	Abandoned/9 1996
		SCO and Design (Stylized Tree)	03/30/99	819433667	Registered/9, 40
		SCO	03/22/94	816968500	Registered/9
E 7	-	SCO	04/05/94	816966133	Registered/40

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Canada	Open Desktop	07/19/91	386744	Registered Renewal date 07/19/06
	Open Desktop And Design	(Applied for, filing date: 4/4/89, Application No. 623809)	(Applied for)	Abandoned/19 95
	SCO and Design (Stylized Tree)	02/29/96	475,359	Registered
	sco	04/23/96	411425	Registered
	SCO and Design	12/17/93	420940	Registered
Chile	Open Desktop	02/26/92	382125	Registered/41, 42 Renewal date 02/26/02
	Open Desktop	12/10/93	418111	Registered/9, 16 Renewal date 12/10/03
	SCO	5/17/89 (renewed 3/23/99)	342750	Registered/42
	sco	03/10/92	383070	Registered/4, 42
China	Open Desktop	(Applied for, filing date: 9/17/92)	(Applied for)	Inactive/16
	Open Desktop	(Applied for, filing date 9/17/92)	(Applied for)	Inactive/9
	Design (Stylized Tree)	07/28/97	1065879	Registered/9
	UNIXWARE	08/07/96	860857	Registered/9
Columbia	Open Desktop	06/09/93	141336	Registered/9 Renewal date

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				06/09/03
Costa Rica	Open Desktop	12/21/90	74001	Registered/9 Renewal Date 12/21/00
Denmark	Open Desktop	08/27/93	VR060871993	Registered/9 Renewal Date 08/27/03 To be abandoned
	UNIXWARE	06/24/94	41.125.1994	Registered/9
	sco	10/30/92	VR100061992	Registered/9, 16, 41, 42
Ecuador	Open Desktop	06/20/90	310090	Registered/9 Renewal Date 06/20/05
El Salvador	Open Desktop	(Applied for, Application No. E163489)	(Applied for)	Abandoned/9 1996
	Open Desktop	(Applied for, Application No. E163589)	(Applied for)	Abandoned/16 1996
European Community	SCO and Design (Stylized Tree)	9/11/98	183129	Registered/9, 16, 42
	UNIXWARE	(Applied for, filing date: 4/1/96; Application no. 183103)	N/A	Opposed/9, 16, 41
Federal Republic of Germany	UNIXWARE UNIXWARE (stacked)	5/12/93 06/17/93	203107 2038592	Registered/9, 16, 37, 38, 42 Registered/9, 16, 37, 38, 42
	UNIXWARE	04/29/93	2035231	Registered/9, 16, 37, 38, 42
Finland	Open Desktop	01/20/95	135997	Registered/9, 16, 42 Renewal date 1/20/05

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	Open Desktop	(Applied for, filing date: 7/13/89, Application No. 353789)	(Applied for)	Abandoned/9 1996
	SCO	12/21/92	123767	Registered/9, 16, 42
France	Open Desktop	07/27/89	1543525	Registerd/9, 16, 42 Do no renew instructions 3/23/99
	SCO	09/09/91	1692453	Registered/9, 16, 41, 42
	SCO	03/13/87	1398504	Registered/9, 42
Germany	Open Desktop	03/23/94	1189990	Registered/9, 16, 35, 42 Do not renew instructions 08/04/00
· ·	sco	03/01/90	1186634	Registered/9, 16, 41, 42
Greece	Open Desktop	07/12/89	94650	Registered/9, 16 Renewal date 07/12/99
Guatemala	Open Desktop	10/24/90	63279	Registered/9 Renewal date 10/24/00
Hong Kong	SCO and Design (Stylized Tree)	02/24/96	5080/97	Registered/9
	sco	09/11/91	1108/94	Registered/9
	sco	09/11/91	879/93	Registered/16
Indonesia	Open Desktop	03/23/92	273226	Registered/9, 16 Renewal date 03/23/02
	UNIXWARE	08/28/95	360559	Registered/9

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	SCO	1/24/95	327021	Registered/9
	SCO	(Applied for, filing date: 9/30/93, Application no. HC010114085A)	333456	(Applied for)
International Bureau	SCO	07/15/87	516330	Registered/9, 42
Ireland	Open Desktop	05/31/93	140756	Abandoned/9 1/23/96
	SCO	09/05/91	146285	Registered/9
Israel	Open Desktop	(Applied for, filing date 9/16/91, Application no. 80953)	(Applied for)	Abandoned/9 12/23/96
	Open Desktop	(Applied for, filing date 10/12/94, Application no. 95553)	(Applied for)	Abandoned/9 12/23/96
Italy	Open Desktop	01/29/92	558705	Registered/9, 16, 36, 42 Renewal date 7/26/99
	UNIXWARE	12/02/93	678741	Registered/9
	SCO	03/02/94	615327	Registered/9, 16, 41, 42
Japan	Open Desktop	05/31/93	2538133	Registered/11 Renewal date 05/31/03
	Open Desktop	05/21/93	2538133	Registered/11 Renewal date 05/31/03 Do not renew
				instructions 3/23/99
	ODT	2/28/95	2704134	Registered/11 Renewal Date 2/28/05
	Open	(Applied for, filing	(Applied for)	Abandoned/1

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•.	Desktop in Katakana	date 12/12/90, Application no. HEI2138270)		
	SCO and Design (Stylized Tree)	10/09/98	4197569	Registered/9
	UNIXWARE	03/21/99	4,273,396	Registered
	sco	6/27/97	3325688	Registered/42
	sco	02/24/93	2610962	Registered/11
Korea (North)	Open Desktop	02/22/91	210102	Registered/39 Renewal date 02/22/01 Do not renew instructions 1/23/96
Korea (South)	SCO and Design (Stylized Tree)	11/01/97	380641	Registered/9
Malaysia	Opėn Desktop	(Applied for, filing date 7/26/89, Application No. 8904470)	(Applied for)	Abandoned/9 1/23/96
Mexico	ODT	3/14/91	433850	Registered/9 Renewal Date 3/14/01
· · ·	Open Desktop	07/25/94	382323	Registered/ 1,6,8,9,11, 12,14,16 Renewal date 07/25/04
	SCO and Design (Stylized Tree)	(Applied for, filing date 02/20/96, Application no. 254919)	(Applied for)	Filed/9
	UNIXWARE	(Applied for, filing date: 12/10/93, Application no.	(Applied for)	Filed/9

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	-	185653)		
	SCO	3/14/91 renewal filed on 10/2/2000)	399947	Registered/9
• •	SCO	10/15/91 (renewal filed on 11/22/2000)	400984	Registered/42
	sco	03/14/91 (renewal field on 10/2/2000)	399948	Registered/16
New Zealand	Open Desktop	(Applied for, filing date: 7/10/89, Application no.	(Appiled for)	Abandoned/9 1/23/96
		194555)		
	SCO	02/09/96	A212704	Registered/9
	UNIXWARE	08/02/94	239501	Registered/9
Norway	Open Desktop	10/31/91	147391	Registered/9, 16, 42 Renewal date 10/31/01 To be abandoned
	SCO	01/14/93	154571	Registered/9, 16, 42
	UNIXWARE	11/02/95	169 934	Registered/9
Pakistan	Open Desktop	(Applied for, filing date 12/4/91, Application no. 113420)	(Applied for)	Abandoned/9 1/23/96
	SCO	11/29/99	113421	Registered/9
· · .	SCO	(Application filed, filling date: 12/04/91, Application No.	(Application filed)	(Pending – published on 2/28/97)
		113422)		<u>.</u>
Paraguay	Open Desktop	12/18/89	137959	Registered/9 Renewal date 12/18/99
Peru	Open Desktop	(Applied for, filing date 8/4/89,	(Applied for)	Rejected

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•	· .	Application no. 157636)		
Portugal	Open Desktop	12/10/92	257352	Registered/9 Renewal Date 12/10/02
	SCO	08/17/93	278165	Registered/9
	sco	09/20/93	278743	Registered/42
Russia	Open Desktop	10/16/92	40861-	Registered/9 Renewal Date 10/09/01
	sco	10/09/91	109157	Registered/9
Singapore	Open Desktop	3/16/89	A453989	Abandoned/9 1/23/96
	ODT	(Applied for, filing date 2/28/91, Application no. 128891)	(Applied for)	Abandoned/9
	SCO	02/28/91 (renewed 2/28/98)	128991	Registered/9
	SCO ·	(Application filed on 2/28/91, Application No. 129091)	(Applied for)	(Pending/16
	sco	03/01/91	218291	Registered/42
South Africa	Open Desktop	08/02/89	B896925	Registered/9 Renewal Dat 08/02/99 No renewed
Spain	Open Desktop	(Applied for, filing date 7/27/89, Application no. 1514081)	(Applied for)	Abandoned/9 1/23/96
	UNIXWARE	12/05/95	1737324	Registered/9
	SCO	02/20/90 (application renewed until	1550163	Registered/9

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1			2/20/2010)	T	
		SCO	06/03/93	1667248	Registered/42
	Sri Lanka	Open Desktop	11/08/91	62566	Registered/9 Renewal Date 11/08/01
•		sco	05/23/95	62568	Registered/9
		sco	11/08/91	62569	Registered/42
	Sweden	Open Desktop	07/23/93	250260	Registered/9, 16, 42 Renewal Date 07/23/03
		UNIXWARE	04/29/94	257804	Registered/9
		SCO	05/14/93	249102	Registered/9, 41, 42
	Switzerland	Open Desktop	07/11/89	374836	Registered/9, 6 Renewal Date 7/11/09
1	· .	sco	09/05/91	392642	Registered/9, 16
	Taiwan	Open Desktop	09/16/90	498741	Registered/72 Renewal Date 09/15/00
		ODT	10/16/91	538693	Registered/49 Renewal Date 9/15/00
		ODT .	11/16/91	542354	Registered/72 Renewal Date 11/15/01
		SCO and Design (Stylized Tree)	03/16/97	753030	Registered/9
		sco	01/16/92 renewal filed 7/7/99	548772	Registered/72
)	·	sco	10/16/91 renewal	538736	Registered/49

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SCO1578601

		filed 7/7/99		
Thailand	Open Desktop	03/17/92	KOR272	Registered/9 Renewal Date 03/17/02
	sco	06/30/93	KOR3310	Registered/9
	sco	06/30/93	KOR3321	Registered/16
Turkey	Open Desktop	07/18/89	113450	Registered/9, 16 Renewal Date 07/18/99 Not Renewed
United Kingdom	Open Desktop	(Applied for, filing daet: 1/27/89, Application no. 1390250)	1/27/89	Abandoned/9 1/23/96
	Open Desktop	03/09/91	B1457899	Registered/9 Renewal Date 03/09/98 Do not renew instructions 1/4/95
	UNIXWARE	09/22/93	1,548,436	Registered/9
	SCO	09/17/91 (renewed through 9/17/2008)	1477302	Registered/9
	sco	9/17/91 (renewed through 9/17/2008)	1477303	Registered/42
United States	Open Desktop	2/6/90	1581180	Abandoned/9 1/23/96
	Open Desktop	03/20/90	1587521	Registered/9 Renewal Date 03/20/90 Do not renew isntructions 1/4/95
	UNIXWARE	07/19/94	1,845,474	Registered/9
· •	UNIXWARE	07/27/99	2,241,666	Registered/9
	SCO and	05/27/97	2,064,732	Registered/9

	Design (Stylized Tree)			
	SCO	01/23/90 (request for renewal sent 1/4/00)	1578766	Registered/9, 16, 41,42
Uruguay	Open Desktop	04/03/92	231681	Registered/9, 16, 42 Renewal Date 04/03/02
Venezuela	Open Desktop	(Applied for, filing date 8/7/89, Application no. 011681)	(Applied for)	Abandoned/50 1/23/96

### SCHEDULE C ASSIGNED COPYRIGHTS AND TECHNOLOGY

# Copyrights

#### A. Source Code Products:

UnixWare 7 Source Code product family as described in SCO's UnixWare 7 Licensing Schedules.

UnixWare 2 product family as described in SCO's UnixWare 2 Licensing Schedules. UnixWare 1.1 as described in the UnixWare 1.1 Licensing Schedule.

UNIX SVR4.2MP as described in the UNIX SVR4.2MP Licensing Schedule and those products listed as "prior" products on such schedule.

UNIX SVR4.2 as described in the UNIX SVR4.2 Licensing Schedule and those products listed as "prior" products on such schedule.

UNIX SVR4.1 ES as described in the UNIX SVR4.1 ES Licensing Schedule and those products listed as "prior" products on such schedule.

UNIX SVR4.0MP as described in the UNIX SVR4.0 MP Licensing Schedule and those products listed as "prior" products on such schedule.

Auxiliary SVRx Products as set forth in Schedule 1 attached hereto.

#### B. Binary Products:

UnixWare 7 product family as described in SCO's price list attached hereto. UnixWare 7 NonStop Clusters as described in SCO's price list attached hereto. UnixWare 2 product family as described in SCO's price list attached hereto. UnixWare 1.1 product family, including UnixWare 1.1 x update releases.

#### C. Products Under Development:

UnixWare 7.1.1 Media Kit Refresh ("Binary Roll-up"). UnixWare 7.1.1 Feature Supplements for UDI, UODK, and DCAP UnixWare 7.1.2 Maintenance

#### Release.

UnixWare 7.2 Upgrade Release - Code Named Aries.

Linux Personality for UnixWare7 - Code Named LKC.

UnixWare 7 NonStop Clusters Release 7.1.1C.

#### Other Technology

UnixWare system/HBA/etc. Test/Certification Suites UnixWare "OS Branding" Test Suites UnixWare "OS Compatible" Requirements Gaede Performance Test Suite ARTUS, Bart, Buster International UNIX Test Suite and test harnesses Requirements, Design, and Test Specifications for UnixWare 2 Technical Support Update Manager Marketing collateral/information in electronic form ODI transmogrification software Perk up technology OpenServer Products: all software, development tools, compilers, libraries, driver kits, utilities, and the operating system software and other products in whole or in part based on or developed from or for the AT&T Unix System V version 3.2 kernel and any successor to that kernel, including the kernel, the code base, the application program interfaces, the application binary interfaces, derivative works thereof, and those products offered under the names or marks "Appliance Server", SCO Admin, SCO OpenServer Enterprise System, SCO OpenServer Host System, SCO OpenServer Internet FastStart System, or SCO OpenServer Desktop System, SCO Virtual Disk Manager, SCO Doctor, SCO ARCserve/Open, SCO Merge, SCO OpenServer SMP<sup>TM</sup> Licenses, SCO PPP from Morning Star, SCO Internet Security Package, SCO Internet to NetWare Gateway, and Interscan VirusWall, and all successors, upgrades, enhancements, releases, new versions, and updates to any of the above that have been developed or acquired by the Contributing Companies as of the Effective Time, as defined in the Reorganization Plan.

#### D. Auxiliary SVRx Products

Open Network Computing+

386 Implementation of UNIX System V Release 4 Multi-National Language Supplement 386 Implementation of UNIX System5 Release 4 Multi-National Language Supplement 3B2 Implementation of UNIX System5 Release 4 Multi-National Language Supplement Application Source Verifier Release 2.0

Artus

C Compilation System for Motorola 68000

C Optimized Compilation System for UNIX System 5 386/486

C++ Documents

C++ Language System Release 2.1

C++ Language System Release 3.0 and 3.0.1

C++ Language System Release 3.0.2

C++ Language System Release 3.0.3

C++ Object Interface Library Release 1.1

C++ Standard Components Release 2.0

C++ Standard Components Release 2.0.1

C++ Standard Components Release 3.0

C++ Standard Libraries Release 2.0

C++ Standard Libraries Release 3.0

C++ Standard Libraries Extension Release 1.0

C++LS 2.0

C++Translator

CFRONT Release 1.2

Chinese System Messages Implementation of UNIX System V Release 4 System Messages Distributed Manager/Framework & Host Manager Release 1.0

Distributed Manager/Framework & Host Manager Technology Licensing Program 1

Distributed Manager/Framework & Host Manager U.I. Early Access

Distributed Manager/Print Manager Release 1.0

Distributed Manager/Print Manager Technology Licensing Program 1

Distributed Manager/Print Manager Technology Licensing Program 1

Distributed Manager/Print Manager U.I. Early Access

DM/SM-TLPI

Documentation Reproduction Provision-UNIX System V Handbook Documentation Reproduction Provision-UNIX System V Programming Books Documentation Reproduction Provision-UNIX System V Reference Books Documentation Reproduction Provision-UNIX System V Users and Administrators Books

European Supplement Release 3.2

European System Messages Release 3.2

French Application Environment 1.0/3b2

French System Messages Implementation of UNIX System V Release 4 System Messages French System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages

German Application Environment

German System Messages Implementation of UNIX System V Release 4 System Messages German System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages

Hindi System Messages Implementation of UNIX System V Release 4 System Messages Intel386 Microprocessor Implementation of VERITAS File System (VxFS) Release 1.0 Intel386 Microprocessor Implementation of VERITAS Visual Administrator Release 1.01 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.01 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.1 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.1 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.1 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.1 Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.1

Italian System Messages Implementation of UNIX System V Release 4 System Messages Japanese Application Environment I/O Rel 1.0

Japanese Application Environment Release 2.0

Japanese Application Environment Release 2.0

Japanese Application Environment Release 2.1

Japanese Application for SVR4.2

Japanese Extension Implementation of UNIX System V Release 4.2

Japanese I/O Release 1.0

Japanese System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages

Japanese System Messages Release 3.2

Korean System Messages Implementation of UNIX System V Release 4 System Messages Optimizing C Compiler for Intel, Release 3.0

Spanish System Messages Implementation of UNIX System V Release 4 System Messages Spanish System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages

System V Release 2.0 Machine Readable Documentation

System V Release 3.0 Documentation Reproduction Provision

System V Release 3.1 Documentation Reproduction Provision

System V Release 3.2 Documentation Reproduction Provision

System V Verification Suite Release 2

System V Verification Suite Release 3

System V Verification Suite Release 4

UNIX System V Prench System Messages Release 3.2

UNIX System V German System Messages Release 3.2

UNIX System V Release 1.0 for 3B2 Multi-National Language Supplement

UNIX System V Release 1.0 for Intel 386 Multi-National Language Supplement

UNIX System V Release 3.2 386 Documentation Reproduction Provision

UNIX System V Release 3.2 for Intel 386 Multi-National Language Supplement

UNIX System V Release 3.2 for Intel 386 Multi-National Language Supplement

UNIX System V Release 3.2 Multi-National Language Supplement

UNIX System V Release 4 European Language Supplement

UNIX System V Release 4 STREAMS-Based Korean Input/Output Subsystem

UNIX System V Release 4.0 386 Documentation Reproduction Provision

UNIX System V Release 4.0 3B2 Documentation Reproduction Provision

UNIX System V Release 4.0 i860 Documentation Reproduction Provision

UNIX System V Release 4.2 European Language Supplement, Version 1

UNIX System V Release 4.2 MP Japanese Extension

UNIX Time Sharing Operating System Phototypesetter and C Compiler Edition #7 USL Standard C Development Environment for the 860 Implementation of UNIX System V Release 4.0

Veritas File System (VxFS) Release 1.3 for UNIX System V Release 4.2

XWIN Graphical Windowing System Release 3.0

XWIN Graphical Windowing System Release 4.0

XWIN Graphical Windowing System Release 4.01

# [SEE TAB NUMBER 6 EXHIBIT C]

# **EXHIBIT 18**

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

THE SCO GROUP, INC., a Delaware corporation,

Plaintiff/Counterclaim-Defendant,

vs.

Judge Dale A. Kimball Magistrate Brooke C. Wells

Civil No.: 2:04CV00139

**DECLARATION OF RALPH YARRO** 

NOVELL, INC., a Delaware corporation,

Defendant/Counterclaim-Plaintiff.

LIBNY/4566965.2

I, Ralph Yarro, declare as follows:

1. I submit this Declaration in connection with <u>The SCO Group, Inc. v. Novell, Inc.</u>, Case No. 2:04CV00139DAK (D. Utah). I have previously signed a Declaration in connection with this lawsuit. I provide my employment and shareholder status in that Declaration. I make this declaration based upon personal knowledge.

2. I met with Chris Stone, an executive at Novell, early in 2003 to update Chris on The Canopy Group's portfolio and consider potential business opportunities between our two companies. We had met several times prior to explore similar opportunities. On this occasion SCO was of interest to Chris, and he ask me several questions about SCO and the lawsuit. I recommended that he refer his question to Darl McBride, who I felt would more appropriately answer his questions. Chris informed me that Darl McBride had been trying to set up a meeting with him, and I encouraged him to do so. I was later informed that Chris had scheduled a meeting at SCO with Darl.

3. I never told Mr. Stone (contrary to what I understand Mr. Stone claims) that I "would like for Novell to make changes to the agreements to give them the copyrights" or any words to that effect. It was not my view at the time of my conversations with Mr. Stone that SCO needed in any way for Novell to transfer the copyrights at issue. Instead, it was my understanding as Chairman of the Board that The SCO Group had acquired all of the Unix copyrights when it purchased the two Unix divisions from the The Santa Cruz Operation, Inc. in 2001.

LIBNY/4566965.2

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

May 17, 2007

4.

бh árro,

LIBNY/4566965.2

# **EXHIBIT 19**

Page 1

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

> SHARI MOSS & ASSOCIATES Certified Shorthand Reporters 877 Cowan Road, Suite A Burlingame, California 94010-1204 (415) 402-0004 (650) 692-8900 FAX: (650) 692-8909

SHARI MOSS & ASSOCIATES (415) 402-0004 P. 800.266.1598 F. 831.373.1141 www.kcscourtreporting.com

<ul> <li>answers. This reporter here will take down everything, and as you know, you're being videotaped.</li> <li>It's important that we try not to talk over each other, so that the reporter can take down what each of us says. It's also important that we keep our conversation verbal, as opposed to nods of the head of us says. It's also important that we keep our conversation verbal, as opposed to nods of the head of us says. It's also important that we keep our conversation verbal, as opposed to nods of the head of us says. It's also important that we keep our conversation verbal, as opposed to nods of the head of us says. It's also important that we keep our conversation verbal, as opposed to nods of the head of us show, my purpose here today isn't to try to 11 trick you or trip you up. So if there's ever anything 12 say that you don't understand. Please just the m know.</li> <li>31 and I'll try and rephrase the question or clarily my question. Do you understand?</li> <li>A. Sure.</li> <li>A. Sure.</li> <li>Q. The next thing. I'm going to use the term 17 'SCO' today to refer both to the entity that's the plaintif in this scioin, and to the corporate entities 19 that it disms as its predecessors. If there's ever 21 experifically user to take sense in light of the different 21 corporate entities, just ter we know.</li> <li>Y. War, from time to time, I expect Mr. Normand</li> <li>Specifically instructs you not to answer, you cang 3 ahead and answer my question.</li> <li>The WITNESS: I don't know what that would can have the duestion repeated to you of can restate 4 accurate and complete testimony as you can today. Jo 9 Q. All right. At tee of all this you will be 10 given a written transcript to review. You'll have the 3 comment notem, so i's important that we have distracting, let me know. 4 and thave the question repeated to you or 1 can restard; 4 accurate and complete testimony as you can today. Jo 9 Q. All right. At ledo.</li> <li>Q. All right. At let end of all this</li></ul>				
2       and as you know, you're being videotaped.       2       of '95 at SCO?         3       A. Simportunt that we try not to talk over       4       as best that I can determine, I was probably CTO at that         5       of us says. It's also important that we keep our       6       0.       A te there other possibilities, or are you         6       conversation verbal, as poposed to nods of the head of       5       opint, Executive Vice-President and then CTO.         6       Q. Now, my purpose here tody is n't to try to       0.       New rearry inny favorite thing, ing         11       trick you or trip you up. So if there's ever any thing I       3       A. I was there for 20 years, and I had half a         9       A. Yes, I do.       0.       I was that you or tain you understand?       0.         12       say that you don't understand?       0.       I was part of the approximation in the yor or early were and the company.         14       question. Do you understand?       0.       I was part of the approximation in the station, and to the corporate entities.         18       plaintiff in this action, and to the corporate entities.       17       THE WITNESS: I don't think so. I mean, I was         12       question doesn't make sense in light of the different.       70, or export the you you can applies only to one particular entity, or thary you apacticapatin in the Asset Purchase Agreement in September '95, is		Page 6		Page 8
2       and as you know, you're being videotaped.       2       of '95 at SCO?         4       exch other, so that the reporter can take down what each       3       A. You know, dates aren't my favorite thing, but         5       of us says. If you how, or that we keep our       6       Q. Are thero other possibilities, or are you         6       Q. Are thero other possibilities, or are you       7         7       shrugs of the shoulder, so that she can take down       8       A. I was there for 20 years, and I had half a         9       A. Yes, I do.       0       Q. Now, my purpose here tody isn't to try to         11       trick you or trip you up. So if therer's ever any thing I       13       so I here were really worried about what my title was.         12       sy that you don't understand?       14       0       I was there for 20 years, and I had half a         14       question. Do you understand?       13       No       13         13       and I'II try and rephrase the question or clarify my       14       14       14         14       question doesn't make sense in light of the different       7       THE WITNESS: I don't think so. I mean. I was         18       plainiff in this action, and to the corporate entities       14       14       14         14       queston doesn't make senses in light of the differe	1	answers. This reporter here will take down everything,	1	execution of the Asset Purchase Agreement in September
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6       conversation verbal, as opposed to nods of the head or shrugs of the shoulder, so that she can take down everything. Do you understand?       A. I was there for 20 years, and I had half a dozen titles, and it never really vorticed about what my title was.         9       A. Yes, I do.       0. Now, my purpose here today isn't to try to 2 say that you don't understand, Please just let me know, and I'll try and rephrase the question or clarify my question. Do you understand?       0. I saw in your declaration that by April 98 you were SCO's President and CEO. Did you have different positions hetween being CTO in September 95 for A. Sire.         10       0. The next thing, I'm going to use the term plaintiff in this action, and to the corporate entities, plaintiff in this action, use the know.       10       10       I was part of lite - part of the, you know, executive plaintiff in this action, and to the different positions between beight on the asset price of the different corporate entities, just let me know.       10       I was part of lite - part of the, you know, executive plaintiff in this objection or any conversation that he and I have had distracting, let me know, and I septicically instructs you not to answer, you cango ahead and answer my question.       11       12       14       14       14       14       14       14       14       14       14         16       A. I do.       16       A. I do.       17       14       14       14       14 <t< td=""><td>4</td><td>each other, so that the reporter can take down what each</td><td>4</td><td>as best that I can determine, I was probably CTO at that</td></t<>	4	each other, so that the reporter can take down what each	4	as best that I can determine, I was probably CTO at that
<ul> <li>7 strugs of the shoulder, so that she can take down</li> <li>8 everything. Do you understand?</li> <li>A. Yes, I do.</li> <li>Q. Now, my purpose here today isn't to try to</li> <li>11 trick you or trip you up. So if there's ever anything I</li> <li>and I'll try and rephrase the question or claiming the end of the shoulder.</li> <li>7 stree -</li> <li>8 A. I was there for 20 years, and I had half a</li> <li>9 dozen titles, and it never really changed my job much,</li> <li>10 or trip you up So if there's ever anything I</li> <li>11 so -</li> <li>12 say that you don't understand.</li> <li>12 0. I saw in your declaration that by April 98</li> <li>13 you were SCO's President and CEO. Did you have</li> <li>14 different positions between being CTO in September 95</li> <li>14 and those positions in April of 1998?</li> <li>15 A. Stree.</li> <li>16 M. NORMAND: Objection. Form.</li> <li>17 THE WTINESS: I don't think so. I mean, I was</li> <li>18 generally - well, in that period I was generally</li> <li>19 Executive Vice-President and CEO. That's a little</li> <li>20 impair was written transcript to review. You can any</li> <li>11 the Asset Purchase Agreement in September 95, is it</li> <li>21 filt now you made those corrections to the transcript. In the asset Purchase Agreement in september 95, is it</li> <li>21 filt now you made those corrections and I'll be able to</li> <li>21 that read I have had distracting, let me know, and I was very involved in the strategy behind it,</li> <li>22 comment on them, so it's important that you give a advecture of a curate and complete testimony as you can today.</li> <li>20 A. No.</li> <li>20 A. No.</li> <li>21 Dy our how any medica medication that</li> <li>22 male much divery any our delaration that in the initiation of the</li></ul>	5	of us says. It's also important that we keep our	5	point, Executive Vice-President and then CTO.
<ul> <li>8 everything. Do you understand?</li> <li>9 A. Yes, I do.</li> <li>9 A. Yes, I do.</li> <li>9 A. Yes, I do.</li> <li>9 J. Soi f there's ever anything I</li> <li>10 so I never really worried about what my title was.</li> <li>11 trick you or trip you up. So if there's ever anything I</li> <li>12 any that you don't understand, Plaese just let me know, and I'll try and rephrase the question or clarify my</li> <li>14 question. Do you understand?</li> <li>15 A. Sure.</li> <li>16 Q. The next thing, I'm going to use the term</li> <li>17 "SCO' today to refer both to the entity that's the</li> <li>18 plaintiff in this action, and to the corporate entities.</li> <li>19 point where you feel that you need to clarify that an</li> <li>21 answer applies only to one particular entity, or that my</li> <li>21 question doesn't make sense in light of the different.</li> <li>22 question doesn't make sense in light of the different.</li> <li>23 Q. Now, from time to time, I expect Mr. Normand</li> <li>24 BY MR. MELAUGH:</li> <li>25 Q. Now, from time to time, I expect Mr. Normand</li> <li>26 an have the question repeated to you or I can restate if any ou participated in those negotiations that led to</li> <li>25 g. Will make objection s on any conversation.</li> <li>26 that he and I have had distracting, let me know, and I</li> <li>27 mort faits objection or any conversation.</li> <li>28 that he and I have had distracting, let me know, and I</li> <li>29 question to mess corrections and I'll be able to that the and I have had distracting, let me know, and I</li> <li>20 given a written transcript to review. You'll have the</li> <li>20 given a written transcript to review. You'll have the</li> <li>21 Til know you make those corrections and I'll be able to taity than anger mainty and I was very involved in the high level state turuer of the accurate and complete testimony as you can today. Do you have any medical condition that thing any your ability to give truthful, accurate testimony today?</li> <li>22 A. Noe.</li> <li>34 A. No</li></ul>	6		6	Q. Are there other possibilities, or are you
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12       say that you don't understand, please just let me know,       12       Q. I saw in your declaration that by April '98         13       and I'll try and rephrase the question or clarify my       question. Do you understand?       13         14       question. Do you understand?       14       gifferent positions between being: CTO in September '95         15       A. Sure.       15       and those positions in April of 1998?         16       Q. The next thing, I'm going to use the term       16       MR. NORMAND: Objection. Form.         17       THE WITNESS: I don't think so. I mean, I was       18       generally - well, in that period I was generally         12       question doesn't make sense in light of the different.       20       I was part of the part of the, you know, executive         21       answer applies only to one particular entity, or that my       question different.       21       team turnning the company. Exact titles didn't - didn't         23       question dofference, other that be dofferent.       20       Now, from time to time, I expect Mr. Normand       20         24       A. Okay.       Q. Now, interms of the negotiations of the megotiations of an any conversation       14       4       BY MR. MELAUGH:         25       Q. Now from time to time, I expect Mr. Normand       20       I was part of the aperement in September '95, is it       2				
<ul> <li>and I'll ry and rephrase the question or clarify my question. Do you understand?</li> <li>and I'll ry and rephrase the question or clarify my question. Do you understand?</li> <li>A. I do.</li> <li>Will make objections to my questions. Unless he specifically instructs you not to answer, you can go a head and answer my question. Unless he specifically instructs you not to answer, you can go a head and answer my question.</li> <li>Will make objections to my questions. Unless he specifically instructs you not to answer, you can go a head and answer my question.</li> <li>Will make objections to my question.</li> <li>Will make objections to my question.</li> <li>The with the and I have had distracting, let me know. and the and I have had distracting, let me know. and the and I have had distracting, let me know. and if a ccurate and complete testimony as you can today.</li> <li>Q. All right. At the end of all this you will be given a written transcript to review. You'll have the accurate and complete testimony as you can today.</li> <li>Q. A. I do.</li> <li>Q. Are you taking any medica medication th might impair your ability to give truthful and accurate and complete testimony as you can today.</li> <li>Q. Do you have any medica medication that it may any or was involved in the histitation of the agreement. and I was very involved in the histitation of the agreement.</li> <li>Q. Wenly how would you characterize your signative truthful and accurate and complete testimony as you can today.</li> <li>Q. Do you have any medica medication that impair your ability to give truthful and accurate testimony today?</li> <li>A. No,</li> <li>Q. No you advig width a might impair your ability to give truthful and accurate fact you was index and the agreement.</li> <li>Q. Mo you advig?</li> <li>A. No,</li> <li>Q. No you have any medical condition that might impair your ability to give truthful and accurate tastimony today?</li> <li>A. No,</li> <li>Y. Was and Y. You Know, the discussion of essentially</li> <td></td><td></td><td></td><td></td></ul>				
14       question Do you understand?       14       different positions between being CTO in September '95         15       A. Sure.       15       and those positions in April of 198?         16       Q. The next thing, I'm going to use the term       15       and those positions in April of 198?         17       "SCO" today to refer both to the entity that's the       15       and those positions in April of 198?         18       plaintiff in this action, and to the corporate entities,       14       different positions between being CTO or ECO, but -1 mean, I was         19       that it claims as its predecessors. If there's ever       19       Executive Vice-President and CTO, or CEO, but -1 mean, I was         21       answer applies only to one particular entity, or that my       question doesn't make sense in light of the different       20       I was part of the – part of the, you know, executive         23       corporate entities, just let me know.       21       team running the company. Exact titles didn't – didn't         23       abed and answer my question.       Unless he       30         24       A. I do.       9       Q. All right. At the end of all this you will be       3       only at sort of high level, as a nexecutive?         26       Q. Weart mascript to review. You'll have the       3       and I was very involved in the initiation of 11         27				
<ul> <li>A. Sure.</li> <li>Q. The next thing, I'm going to use the term</li> <li>TSCO<sup>®</sup> today to refer both to the entity that's the</li> <li>plaintiff in this action, and to the corporate entities,</li> <li>plaintiff in this action, and to the corporate entities,</li> <li>plaintiff in this action, and to the corporate entities,</li> <li>point where you feel that you need to clarify that an</li> <li>answer applies only to one particular entity, or that my</li> <li>question doesn't make sense in light of the different.</li> <li>answer applies only to one particular entity, or that my</li> <li>question doesn't make sense in light of the different.</li> <li>Q. Now, from time to time, I expect Mr. Normand</li> <li>Fage 7</li> <li>will make objections to my questions. Unless he</li> <li>specifically instructs you not to answer, you cang oa</li> <li>ahead and answer my question.</li> <li>that he and I have had distracting, let me know, and I</li> <li>can have the question repeated to you or I can restate</li> <li>it myself. Do you understand that?</li> <li>A. I do.</li> <li>Q. All right. At the end of all this you will be</li> <li>given a written transcript to review. You'l have the</li> <li>opportunity to make corrections and I'll be able to</li> <li>timpair your ability to give truthful, accurate</li> <li>and uwas very involved in the sintaction of the agreement.</li> <li>Q. Now, now, medical condition that might</li> <li>mimpair your ability to give truthful, accurate</li> <li>Q. Do you have any medical condition that might</li> <li>timpair your ability to give truthful and accurate</li> <li>textimony today?</li> <li>A. Noe.</li> <li>Buy MR, MELAUGH:</li> <li>Buy MR. MELAUGH:</li> <li>Buy MR. MELAUGH:</li> <li>Q. Well, how would you characterize your</li> <li>participation in the Asset Purchase Agreement</li> <li>negotiations?</li> <li>He agreement, and I was very involved in the initiation of</li> <li>timpair your ability to give truthful, accurate</li> <li>textimony today?</li> <li>A. Noe.</li> <li>Buy MR. MELA</li></ul>				
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<ul> <li>18 plaintiff in this action, and to the corporate entities in that it claims as its predecessors. If there's ever a point where you feel that you need to clarify that an answer applies only to one particular entity, or that my question doesn't make sense in light of the different corporate entities, just let me know.</li> <li>24 A. Okay.</li> <li>25 Q. Now, from time to time, I expect Mr. Normand</li> <li>26 Will make objections to my questions.</li> <li>27 Page 7</li> <li>28 A. Okay.</li> <li>29 Sectifically instructs you not to answer, you can go ahead and answer my question.</li> <li>29 MR. MELAUGH:</li> <li>20 Now, find his objection or any conversation that had distracting, let me know, and I can have the question repeated to you or I can restate it myself. Do you understand that?</li> <li>3 A. Ido.</li> <li>4 If you find his objections to the transcript, but opportunity to make corrections and I'll be able to given a written transcript to review. You'll have the accurate and complete testimony as you can today.</li> <li>4 A. Ido.</li> <li>7 Q. Are you taking any medica medication that might impair your ability to give truthful, accurate</li> <li>4 N. Noo.</li> <li>4 A. Noo.</li> <li>4 A. Noo.</li> <li>4 A. Nope.</li> <li>18 generally well, in that period I was generally - lice is any arrol the part of the, you know, the discustorio or State is a transcript. but is the apreement, and I was very involved in the initiation of 12 it, and I was very involved in the strategy behind it, and I was very involved in the strategy behind it, and I was very involved in the initiation of 14 might impair your ability to give truthful, accurate testimony today?</li> <li>4 A. Nope.</li> </ul>				
<ul> <li>19 that it claims as its predecessors. If there's ever a point where you feel that you need to clarify that an answer applies only to one particular entity, or that my 22 question doesn't make sense in light of the different.</li> <li>23 corporate entities, just let me know.</li> <li>24 A. Okay.</li> <li>25 Q. Now, from time to time, I expect Mr. Normand</li> <li>25 Page 7</li> <li>26 Now, from time to time, I expect Mr. Normand</li> <li>27 Page 7</li> <li>28 pecifically instructs you not to answer, you can go ahead and answer my question.</li> <li>29 A. I do.</li> <li>20 A. I do.</li> <li>21 (I how you made toos corrections to the transcript, but it myself. Do you understand that?</li> <li>21 (I know you made toos corrections and I'l be able to oportunity to make corrections and I'l be able to accurate and complete testimony today?</li> <li>20 A. No.</li> <li>21 (Q. Noy understand?</li> <li>22 (Q. Noy have any medical condition that might impair your ability to give truthful and accurate testimony today?</li> <li>24 A. Nope.</li> <li>25 (Q. Do you have any medical condition that might impair your ability to give truthful and accurate testimony today?</li> <li>24 A. Nope.</li> <li>25 (P. Now, int erms of the agreement, and I was very involved in the sintiation of essentially</li> <li>25 (P. Now, interms of the agreement, and I was involved in supervising pretty involved in the sintergy behind it, accurate and complete testimony today?</li> <li>24 A. Nope.</li> </ul>				
<ul> <li>20 point where you feel that you need to clarify that an answer applies only to one particular entity, or that my question doesn't make sense in light of the different.</li> <li>21 answer applies only to one particular entity, or that my question doesn't make sense in light of the different.</li> <li>21 A. Okay.</li> <li>22 Now, from time to time, I expect Mr. Normand</li> <li>23 different.</li> <li>24 A. Okay.</li> <li>25 Q. Now, from time to time, I expect Mr. Normand</li> <li>26 Page 7</li> <li>27 Page 9</li> <li>28 will make objections to my question.</li> <li>29 If you find his objection or any conversation tat have the question repeated to you or I can restate it myself. Do you understand that?</li> <li>3 A. I do.</li> <li>4 A. I do.</li> <li>9 Q. All right. At the end of all this you will be given an written transcript to review. You'll have the accurate and complete testimony as you can today.</li> <li>20 A. No.</li> <li>21 M. No.</li> <li>22 A. No.</li> <li>23 A. No.</li> <li>24 A. No.</li> <li>25 A. I do.</li> <li>26 A. I do.</li> <li>27 D. A portunity to make corrections to the transcript, but transcript to review. You'll have the question repeated to you can today.</li> <li>20 A. No.</li> <li>21 M. No toda?</li> <li>22 A. No.</li> <li>23 A. No.</li> <li>24 A. Nope.</li> <li>24 A. Nope.</li> <li>25 Do you have any medical condition that might impair your ability to give truthful and accurate testimony today?</li> <li>24 A. Nope.</li> <li>25 Do you have any medical condition that might impair your ability to give truthful and accurate testimony today?</li> <li>24 A. Nope.</li> <li>25 Do you know, medical condition that might impair your ability to give truthful and accurate testimony today?</li> <li>24 A. Nope.</li> <li>25 Do you have any medical condition that might impair your ability to give truthful and accurate testimony today?</li> <li>25 A. Nope.</li> <li>26 A. Nope.</li> <li>27 A. Nope.</li> <li>28 A. Nope.</li> <li>29 A. Nope.</li> <li>20 A. Nope.</li> <li>20 A. Nope.</li> <li>20 A.</li></ul>				
21       answer applies only to one particular entity, or that my       21       team running the company. Exact titles didn't didn't         22       question doesn't make sense in light of the different.       23       different.         23       corporate entities, just let me know.       24       different.         24       A. Okay.       25       Q. Now, from time to time, I expect Mr. Normand       25       Q. Now, in terms of the negotiations that led to         25       Q. Now, from time to time, I expect Mr. Normand       25       Q. Now, in terms of the negotiations that led to         26       Now, from time to time, I expect Mr. Normand       25       Q. Now, in terms of the negotiations that led to         26       Now, from time to time, I expect Mr. Normand       26       YMR. MELAUGH:         27       the Asset Purchase Agreement in September '95, is it       27         30       ahead and answer my question.       3       14         4       If you find his objection or any conversation       5       THE WITNESS: I don't know what that would         6       can have the question repeated to you or I can restate       7       BY MR. MELAUGH:         8       A. I do.       7       WR. MELAUGH:         12       rill know you made those corrections and TI'l be able to       9       participation in the Asset				
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<ul> <li>2 specifically instructs you not to answer, you can go ahead and answer my question.</li> <li>4 If you find his objection or any conversation 5 that he and I have had distracting, let me know, and I can have the question repeated to you or I can restate 7 it myself. Do you understand that?</li> <li>8 A. I do.</li> <li>9 Q. All right. At the end of all this you will be given a written transcript to review. You'll have the 10 opportunity to make corrections to the transcript, but 11 ll know you made those corrections and I'll be able to 2 A. I do.</li> <li>11 know you understand?</li> <li>12 rill know you made those corrections and Till be able to 3 accurate and complete testimony as you can today. 5 you understand?</li> <li>13 comment on them, so it's important that you give as 14 accurate and complete testimony as you can today. 5 you understand?</li> <li>12 A. I do.</li> <li>13 A. I do.</li> <li>14 the agreement, and I was involved in the high level structure of 14 the agreement. 7 Q. Are you taking any medica medication that might impair your ability to give truthful, accurate 19 testimony today?</li> <li>2 A. No.</li> <li>2 A. No.</li> <li>2 A. No.</li> <li>2 A. No.</li> <li>3 Do you have any medical condition that might 1 impair your ability to give truthful and accurate 2 testimony today?</li> <li>2 A. Nope.</li> <li>2 A. Nope.</li> <li>2 A. Now, the discussion of essentially</li> </ul>	-		-	
<ul> <li>3 ahead and answer my question.</li> <li>4 If you find his objection or any conversation</li> <li>5 that he and I have had distracting, let me know, and I</li> <li>6 can have the question repeated to you or I can restate</li> <li>7 it myself. Do you understand that?</li> <li>8 A. I do.</li> <li>9 Q. All right. At the end of all this you will be</li> <li>10 given a written transcript to review. You'll have the</li> <li>11 opportunity to make corrections to the transcript, but</li> <li>12 I'll know you made those corrections and I'll be able to</li> <li>13 comment on them, so it's important that you give as</li> <li>14 accurate and complete testimony as you can today. Do</li> <li>15 you understand?</li> <li>16 A. I do.</li> <li>17 Q. Are you taking any medica medication that</li> <li>18 might impair your ability to give truthful, accurate</li> <li>19 testimony today?</li> <li>10 Dy ou have any medical condition that might</li> <li>20 A. No.</li> <li>21 Q. Do you have any medical condition that might impair your ability to give truthful and accurate</li> <li>21 Q. Do you have any medical condition that might</li> <li>22 may restimony today?</li> <li>23 A. Nope.</li> <li>24 A. Nope.</li> <li>3 only at sort of high level, as an executive?</li> <li>3 only at sort of high level, as an executive?</li> <li>3 man I was very involved in the initiation of</li> <li>12 it, and I was very involved in the high level structure of</li> <li>14 the agreement, and I was involved in supervising pretty</li> <li>15 directly the people who were negotiating the details of</li> <li>16 the agreement.</li> <li>17 Q. When you asy you were involved in the</li> <li>18 initiation of the agreement, can you tell me what you</li> <li>19 mean by that?</li> <li>20 A. No.</li> <li>21 A. Nope.</li> <li>22 M. Nope.</li> </ul>				
4If you find his objection or any conversation4MR. NORMAND: Objection. Form.5that he and I have had distracting, let me know, and I5THE WITNESS: I don't know what that would6can have the question repeated to you or I can restate7THE WITNESS: I don't know what that would7it myself. Do you understand that?8Q. Well, how would you characterize your9Q. All right. At the end of all this you will be9participation in the Asset Purchase Agreement10opportunity to make corrections to the transcript, but11A. Well, I was very involved in the initiation of12I'll know you made those corrections and I'll be able to12it, and I was very involved in the strategy behind it,13comment on them, so it's important that you give as13and I was very involved in the high level structure of14accurate and complete testimony as you can today. Di14the agreement.15you understand?16the agreement.16A. I do.17Q. Are you taking any medicar medication that18might impair your ability to give truthful, accurate1919testimony today?2020A. No.2021Q. Do you have any medical condition that might22A. No.2023testimony today?24A. Nope.24A. Nope.24A. Nope.				
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			24	
$23 - \chi$ , what was your position at the time of the $1/23$ acquiring Orly had been going on tor ten years. Defore	25	Q. What was your position at the time of the	25	acquiring UNIX had been going on for ten years. Before

3 (Pages 6 to 9)

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1	Page 98		Page 100
1 -	sent it to one or two people, and none of them had	1	A
2	any they all said it looks exactly right. I mean,	$\begin{vmatrix} 1\\2 \end{vmatrix}$	A. Yes.
3	just I just wanted to make sure I hadn't missed any	3	Q which says:
4	obvious dates, or anything, you know, because I don't	4	With respect to Schedule 1.1(b) of the
5	trust my memory about dates. There were no comments	5	Agreement, titled "Excluded Assets",
6	that were resulted in any changes.	6	Section V, Subsection A shall be revised
7	Q. You had a what I would describe as a fairly		to read:
8	long discussion with Mr. Melaugh this morning regarding		And let me stop there.
9	source code rights originating with OEMs versus binary	9	A. Right.
10	royalty streams and and source code rights that did	10	Q. Do you recall reviewing that schedule this
11	not originate with OEMs. Do you recall, generally,	11	morning
12	those questions and answers?	12	A. Yes.
13	A. Oh, yes.	13	Q with Mr. Melaugh?
14	Q. Did you have a view at the time of the APA as	14	And paragraph A of Amendment Number 2 goes on
15	to whether Novell was entitled to keep source code fees	15	to say that the Excluded Assets is revised to read,
16	that were paid to Novell or Santa Cruz based on the	16	quote:
17	licensing of additional CPUs?	17	-
18	A. Um	18	All copyrights and trademarks, except for the copyrights and trademarks owned
19	Q. Does your recollection	19	by Novell as of the date of the
20	A. Well, I'm	20	Agreement required for SCO to exercise
20	Q go into that specifically?	20	its rights with respect to the
22	A. Well, very specifically, Novell didn't have	22	acquisition of UNIX and UnixWare
23		22	-
23 24	the right to collect anything from anyone. I mean, all collection had to be by us. So you know, it was your	23	technologies,
24	collection had to be by us. So, you know, it was very clear. We were the interface to all customers and	24	and the language goes on. Do you see that language? A. Yes.
25	Page 99	2.5	Page 101
1		1	
1	all all billing. So there was never any intention	1	Q. Do you have a view as to the copyrights that
2	that Novell could bill anybody for anything or collect	2	Novell owned as of the date of the APA that were
3	any royalty from anyone.	3	required for SCO to exercise its rights with respect to
4	So it to the extent your question is, did	45	the acquisition of UNIX and the UnixWare technologies?
5	they have the right to keep something, well, they would	<u>ה</u>	
~			A. Well, it would have been all the copyrights
6	have had to have a right to collect it before they could	6	regarding the intellectual property we bought.
7	keep it	6 7	regarding the intellectual property we bought. Q. And why do you say that?
7 8	keep it Q. Okay.	6 7 8	<ul><li>regarding the intellectual property we bought.</li><li>Q. And why do you say that?</li><li>A. Because we were buying all the intellectual</li></ul>
7 8 9	keep it Q. Okay. A which they didn't.	6 7 8 9	<ul><li>regarding the intellectual property we bought.</li><li>Q. And why do you say that?</li><li>A. Because we were buying all the intellectual property. I mean, I think the only reason it's written</li></ul>
7 8 9 10	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you</li> </ul>	6 7 8 9 10	<ul><li>regarding the intellectual property we bought.</li><li>Q. And why do you say that?</li><li>A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the</li></ul>
7 8 9 10 11	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you</li> <li>know, I'll say my recollection is that the only economic</li> </ul>	6 7 8 9 10 11	<ul><li>regarding the intellectual property we bought.</li><li>Q. And why do you say that?</li><li>A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean,</li></ul>
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7 8 9 10 11 12 13 14	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you</li> <li>know, I'll say my recollection is that the only economic revenue stream they had an interest in was revenues</li> <li>resulting from existing binary contracts, and if there was any source that was source that was related</li> </ul>	6 7 8 9 10 11 12 13 14	regarding the intellectual property we bought. Q. And why do you say that? A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean, you know, you're dealing with a business that had been around a long time, created millions of things, and had manuals and documents and source codes. I think this
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7 8 9 10 11 12 13 14 15 16 17	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you</li> <li>know, I'll say my recollection is that the only economic revenue stream they had an interest in was revenues</li> <li>resulting from existing binary contracts, and if there</li> <li>was any source that was source that was related</li> <li>somehow, and embedded in those binary contracts.</li> <li>And then, as I say, I just don't remember if</li> <li>any such source existed, but these contracts were very</li> </ul>	6 7 8 9 10 11 12 13 14 15 16 17	regarding the intellectual property we bought. Q. And why do you say that? A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean, you know, you're dealing with a business that had been around a long time, created millions of things, and had manuals and documents and source codes. I think this was just a blanket statement saying, yeah, whatever whatever is whatever is part of the business you get, because
7 8 9 10 11 12 13 14 15 16 17 18	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you</li> <li>know, I'll say my recollection is that the only economic revenue stream they had an interest in was revenues</li> <li>resulting from existing binary contracts, and if there</li> <li>was any source that was source that was related</li> <li>somehow, and embedded in those binary contracts.</li> <li>And then, as I say, I just don't remember if</li> <li>any such source existed, but these contracts were very</li> <li>convoluted and had very strange provisions. So and</li> </ul>	6 7 8 9 10 11 12 13 14 15 16 17 18	regarding the intellectual property we bought. Q. And why do you say that? A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean, you know, you're dealing with a business that had been around a long time, created millions of things, and had manuals and documents and source codes. I think this was just a blanket statement saying, yeah, whatever whatever is whatever is part of the business you get, because Q. Let me ask a very fundamental question that I
7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you</li> <li>know, I'll say my recollection is that the only economic</li> <li>revenue stream they had an interest in was revenues</li> <li>resulting from existing binary contracts, and if there</li> <li>was any source that was source that was related</li> <li>somehow, and embedded in those binary contracts.</li> <li>And then, as I say, I just don't remember if</li> <li>any such source existed, but these contracts were very</li> <li>convoluted and had very strange provisions. So and</li> <li>I'm not willing to say for sure that there isn't.</li> </ul>	6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>regarding the intellectual property we bought.</li> <li>Q. And why do you say that?</li> <li>A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean, you know, you're dealing with a business that had been around a long time, created millions of things, and had manuals and documents and source codes. I think this was just a blanket statement saying, yeah, whatever whatever is whatever is part of the business you get, because</li> <li>Q. Let me ask a very fundamental question that I probably didn't capture clearly in my previous question.</li> </ul>
7 8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you know, I'll say my recollection is that the only economic revenue stream they had an interest in was revenues resulting from existing binary contracts, and if there was any source that was source that was related somehow, and embedded in those binary contracts.</li> <li>And then, as I say, I just don't remember if any such source existed, but these contracts were very convoluted and had very strange provisions. So and I'm not willing to say for sure that there isn't.</li> <li>Q. I wanted to show you, Mr. Michels, what's been</li> </ul>	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>regarding the intellectual property we bought.</li> <li>Q. And why do you say that?</li> <li>A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean, you know, you're dealing with a business that had been around a long time, created millions of things, and had manuals and documents and source codes. I think this was just a blanket statement saying, yeah, whatever whatever is whatever is part of the business you get, because</li> <li>Q. Let me ask a very fundamental question that I probably didn't capture clearly in my previous question. Why, in your view, was it necessary or required for</li> </ul>
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you know, I'll say my recollection is that the only economic revenue stream they had an interest in was revenues resulting from existing binary contracts, and if there was any source that was source that was related somehow, and embedded in those binary contracts.</li> <li>And then, as I say, I just don't remember if any such source existed, but these contracts were very convoluted and had very strange provisions. So and I'm not willing to say for sure that there isn't.</li> <li>Q. I wanted to show you, Mr. Michels, what's been previously marked as Exhibit 1009, which is entitled</li> </ul>	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<ul> <li>regarding the intellectual property we bought.</li> <li>Q. And why do you say that?</li> <li>A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean, you know, you're dealing with a business that had been around a long time, created millions of things, and had manuals and documents and source codes. I think this was just a blanket statement saying, yeah, whatever whatever is whatever is part of the business you get, because</li> <li>Q. Let me ask a very fundamental question that I probably didn't capture clearly in my previous question. Why, in your view, was it necessary or required for Santa Cruz to have the copyrights in order to exercise</li> </ul>
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you</li> <li>know, I'll say my recollection is that the only economic</li> <li>revenue stream they had an interest in was revenues</li> <li>resulting from existing binary contracts, and if there</li> <li>was any source that was source that was related</li> <li>somehow, and embedded in those binary contracts.</li> <li>And then, as I say, I just don't remember if</li> <li>any such source existed, but these contracts were very</li> <li>convoluted and had very strange provisions. So and</li> <li>I'm not willing to say for sure that there isn't.</li> <li>Q. I wanted to show you, Mr. Michels, what's been</li> <li>previously marked as Exhibit 1009, which is entitled</li> <li>"Amendment Number 2 to the Asset Purchase Agreement."</li> </ul>	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	regarding the intellectual property we bought. Q. And why do you say that? A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean, you know, you're dealing with a business that had been around a long time, created millions of things, and had manuals and documents and source codes. I think this was just a blanket statement saying, yeah, whatever whatever is whatever is part of the business you get, because Q. Let me ask a very fundamental question that I probably didn't capture clearly in my previous question. Why, in your view, was it necessary or required for Santa Cruz to have the copyrights in order to exercise its rights with respect to UNIX and UnixWare
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you</li> <li>know, I'll say my recollection is that the only economic</li> <li>revenue stream they had an interest in was revenues</li> <li>resulting from existing binary contracts, and if there</li> <li>was any source that was source that was related</li> <li>somehow, and embedded in those binary contracts.</li> <li>And then, as I say, I just don't remember if</li> <li>any such source existed, but these contracts were very</li> <li>convoluted and had very strange provisions. So and</li> <li>I'm not willing to say for sure that there isn't.</li> <li>Q. I wanted to show you, Mr. Michels, what's been</li> <li>previously marked as Exhibit 1009, which is entitled</li> <li>"Amendment Number 2 to the Asset Purchase Agreement."</li> <li>Do you recognize this document?</li> </ul>	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	regarding the intellectual property we bought. Q. And why do you say that? A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean, you know, you're dealing with a business that had been around a long time, created millions of things, and had manuals and documents and source codes. I think this was just a blanket statement saying, yeah, whatever whatever is whatever is part of the business you get, because Q. Let me ask a very fundamental question that I probably didn't capture clearly in my previous question. Why, in your view, was it necessary or required for Santa Cruz to have the copyrights in order to exercise its rights with respect to UNIX and UnixWare technologies?
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>keep it</li> <li>Q. Okay.</li> <li>A which they didn't.</li> <li>And as to, you know, specifically what you</li> <li>know, I'll say my recollection is that the only economic</li> <li>revenue stream they had an interest in was revenues</li> <li>resulting from existing binary contracts, and if there</li> <li>was any source that was source that was related</li> <li>somehow, and embedded in those binary contracts.</li> <li>And then, as I say, I just don't remember if</li> <li>any such source existed, but these contracts were very</li> <li>convoluted and had very strange provisions. So and</li> <li>I'm not willing to say for sure that there isn't.</li> <li>Q. I wanted to show you, Mr. Michels, what's been</li> <li>previously marked as Exhibit 1009, which is entitled</li> <li>"Amendment Number 2 to the Asset Purchase Agreement."</li> </ul>	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	regarding the intellectual property we bought. Q. And why do you say that? A. Because we were buying all the intellectual property. I mean, I think the only reason it's written this way is because nobody was sure what all the copyrights were. I mean, there were hundreds I mean, you know, you're dealing with a business that had been around a long time, created millions of things, and had manuals and documents and source codes. I think this was just a blanket statement saying, yeah, whatever whatever is whatever is part of the business you get, because Q. Let me ask a very fundamental question that I probably didn't capture clearly in my previous question. Why, in your view, was it necessary or required for Santa Cruz to have the copyrights in order to exercise its rights with respect to UNIX and UnixWare

26 (Pages 98 to 101)

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	Page 102		Page 104
1	the products are, you know, effectively, source code and	1	Q. Did any attorney from Santa Cruz ever tell you
2	documentation and screens, all of which are governed by	2	any such thing?
3	copyrights. That's what that's what you own. That's	3	A. No.
4	the intellectual property of a source code product. It	4	Q. Did any executive or any employee of Santa
5	would be meaningless to own it if you didn't own the	5	Cruz ever tell you any such thing?
6	copyrights. I mean, that's that's what you would	6	A. Not that I can recall. I think I would have
7	have to have.	7	laughed them out of my office.
8	And there's no reason if you own it,	8	THE REPORTER: Um
9	there's no reason for anybody else to have it, other	9	MR. TIBBITTS: Did you get that?
10	than, you know, this sort of residual thing we've talked	10	THE REPORTER: No. "I would have asked him
11	about.	11	out of my office"?
12	BY MR. NORMAND:	12	THE WITNESS: Laughed them out of my office.
13	Q. Was it part of Santa Cruz's exercise of its	13	If I was in a good mood.
14	rights with respect to the UNIX and UnixWare	14	BY MR. NORMAND:
15	technologies to make copies of the UNIX and UnixWare	15	Q. Now, I had directed your attention earlier to
16	source code?	16	Exhibit 241, which was your declaration. Did you have
17	A. What do you mean?	17	a ever have occasion to speak with counsel for IBM
18	Q. Do you know, from your experience at Santa	18	about the prospect of a declaration?
19	Cruz, whether, after the APA, Santa Cruz had occasion to	19	A. I did not speak to them specifically about a
20	make copies and distribute versions of the UNIX and	20	declaration. I did they asked me if I would come in
21	UnixWare source code?	21	and and answer a few questions, and I and I did.
22	A. Of course we did. What business were we in?	22	In fact, in this very in, I think, the room across
23	Q. Do you have a view, from your experience at	23	the hall, actually, but
24	Santa Cruz, as to whether, after the APA, Santa Cruz had	24	Q. Can you recall whom you spoke with?
25	occasion to license the rights to use UNIX and UnixWare	25	A. I no.
	Page 103		Page 105
1	to other companies?	1	Q. What
2	to other companies? A. Of course.	2	<ul><li>Q. What</li><li>A. I mean, if you give me some names, I might</li></ul>
2 3	<ul><li>to other companies?</li><li>A. Of course.</li><li>Q. Do you recall any discussion or negotiation</li></ul>	2 3	Q. What A. I mean, if you give me some names, I might remember, but
2 3 4	<ul><li>to other companies?</li><li>A. Of course.</li><li>Q. Do you recall any discussion or negotiation surrounding the language in paragraph A of Amendment</li></ul>	2 3 4	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> </ul>
2 3 4 5	<ul><li>to other companies?</li><li>A. Of course.</li><li>Q. Do you recall any discussion or negotiation</li><li>surrounding the language in paragraph A of Amendment</li><li>Number 2 at the time Amendment Number 2 was executed?</li></ul>	2 3 4 5	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> </ul>
2 3 4 5 6	<ul><li>to other companies?</li><li>A. Of course.</li><li>Q. Do you recall any discussion or negotiation</li><li>surrounding the language in paragraph A of Amendment</li><li>Number 2 at the time Amendment Number 2 was executed?</li><li>A. No. I mean, looking at these two documents</li></ul>	2 3 4 5 6	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> <li>Q. Christopher Kao?</li> </ul>
2 3 4 5 6 7	<ul> <li>to other companies?</li> <li>A. Of course.</li> <li>Q. Do you recall any discussion or negotiation</li> <li>surrounding the language in paragraph A of Amendment</li> <li>Number 2 at the time Amendment Number 2 was executed?</li> <li>A. No. I mean, looking at these two documents</li> <li>here and now, I mean, it's pretty clear this is</li> </ul>	2 3 4 5 6 7	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> <li>Q. Christopher Kao?</li> <li>A. No. Dave Marriott maybe. I don't know. They</li> </ul>
2 3 4 5 6 7 8	<ul> <li>to other companies?</li> <li>A. Of course.</li> <li>Q. Do you recall any discussion or negotiation surrounding the language in paragraph A of Amendment Number 2 at the time Amendment Number 2 was executed?</li> <li>A. No. I mean, looking at these two documents here and now, I mean, it's pretty clear this is correcting an error in the previous document.</li> </ul>	2 3 4 5 6 7 8	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> <li>Q. Christopher Kao?</li> <li>A. No. Dave Marriott maybe. I don't know. They called me up and said we have some questions</li> </ul>
2 3 4 5 6 7 8 9	<ul> <li>to other companies?</li> <li>A. Of course.</li> <li>Q. Do you recall any discussion or negotiation surrounding the language in paragraph A of Amendment Number 2 at the time Amendment Number 2 was executed?</li> <li>A. No. I mean, looking at these two documents here and now, I mean, it's pretty clear this is correcting an error in the previous document.</li> <li>I mean, there there was no money that</li> </ul>	2 3 4 5 6 7 8 9	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> <li>Q. Christopher Kao?</li> <li>A. No. Dave Marriott maybe. I don't know. They called me up and said we have some questions</li> <li>Q. Dave</li> </ul>
2 3 4 5 6 7 8 9 10	<ul> <li>to other companies?</li> <li>A. Of course.</li> <li>Q. Do you recall any discussion or negotiation surrounding the language in paragraph A of Amendment Number 2 at the time Amendment Number 2 was executed?</li> <li>A. No. I mean, looking at these two documents here and now, I mean, it's pretty clear this is correcting an error in the previous document.</li> <li>I mean, there there was no money that changed hands for this. And if the previous document</li> </ul>	2 3 4 5 6 7 8 9 10	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> <li>Q. Christopher Kao?</li> <li>A. No. Dave Marriott maybe. I don't know. They called me up and said we have some questions</li> <li>Q. Dave</li> <li>A and would you come in?</li> </ul>
2 3 4 5 6 7 8 9 10 11	<ul> <li>to other companies?</li> <li>A. Of course.</li> <li>Q. Do you recall any discussion or negotiation surrounding the language in paragraph A of Amendment Number 2 at the time Amendment Number 2 was executed?</li> <li>A. No. I mean, looking at these two documents here and now, I mean, it's pretty clear this is correcting an error in the previous document. <ul> <li>I mean, there there was no money that changed hands for this. And if the previous document was correct, then this would be a huge concession. You</li> </ul> </li> </ul>	2 3 4 5 6 7 8 9 10 11	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> <li>Q. Christopher Kao?</li> <li>A. No. Dave Marriott maybe. I don't know. They called me up and said we have some questions</li> <li>Q. Dave</li> <li>A and would you come in?</li> <li>Q. Dave Saltarelli?</li> </ul>
2 3 4 5 6 7 8 9 10 11 12	<ul> <li>to other companies?</li> <li>A. Of course.</li> <li>Q. Do you recall any discussion or negotiation surrounding the language in paragraph A of Amendment</li> <li>Number 2 at the time Amendment Number 2 was executed?</li> <li>A. No. I mean, looking at these two documents</li> <li>here and now, I mean, it's pretty clear this is</li> <li>correcting an error in the previous document.</li> <li>I mean, there there was no money that</li> <li>changed hands for this. And if the previous document</li> <li>was correct, then this would be a huge concession. You</li> <li>would expect there would have been, you know, payment or</li> </ul>	2 3 4 5 6 7 8 9 10 11 12	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> <li>Q. Christopher Kao?</li> <li>A. No. Dave Marriott maybe. I don't know. They called me up and said we have some questions</li> <li>Q. Dave</li> <li>A and would you come in?</li> <li>Q. Dave Saltarelli?</li> <li>A. No.</li> </ul>
2 3 4 5 6 7 8 9 10 11 12 13	<ul> <li>to other companies?</li> <li>A. Of course.</li> <li>Q. Do you recall any discussion or negotiation surrounding the language in paragraph A of Amendment</li> <li>Number 2 at the time Amendment Number 2 was executed?</li> <li>A. No. I mean, looking at these two documents</li> <li>here and now, I mean, it's pretty clear this is</li> <li>correcting an error in the previous document.</li> <li>I mean, there there was no money that</li> <li>changed hands for this. And if the previous document</li> <li>was correct, then this would be a huge concession. You</li> <li>would expect there would have been, you know, payment or consideration of some form.</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> <li>Q. Christopher Kao?</li> <li>A. No. Dave Marriott maybe. I don't know. They called me up and said we have some questions</li> <li>Q. Dave</li> <li>A and would you come in?</li> <li>Q. Dave Saltarelli?</li> <li>A. No.</li> <li>Q. What came of those discussions, if anything?</li> </ul>
2 3 4 5 6 7 8 9 10 11 12 13 14	<ul> <li>to other companies?</li> <li>A. Of course.</li> <li>Q. Do you recall any discussion or negotiation surrounding the language in paragraph A of Amendment Number 2 at the time Amendment Number 2 was executed?</li> <li>A. No. I mean, looking at these two documents here and now, I mean, it's pretty clear this is correcting an error in the previous document. I mean, there there was no money that changed hands for this. And if the previous document was correct, then this would be a huge concession. You would expect there would have been, you know, payment or consideration of some form. So you see something this massive being</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14	<ul> <li>Q. What</li> <li>A. I mean, if you give me some names, I might remember, but</li> <li>Q. David Marriott?</li> <li>A. Could be.</li> <li>Q. Christopher Kao?</li> <li>A. No. Dave Marriott maybe. I don't know. They called me up and said we have some questions</li> <li>Q. Dave</li> <li>A and would you come in?</li> <li>Q. Dave Saltarelli?</li> <li>A. No.</li> <li>Q. What came of those discussions, if anything?</li> <li>A. Never heard from them again.</li> </ul>
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	Page 126		Page 128
1	BY MR. MELAUGH:	1	BY MR. MELAUGH:
2	Q. So I understand, I think you answered a	2	Q. Why are all those copyrights required for SCO
3	similar question from Mr. Normand, but I just want to	3	to exercise its rights with respect to the acquisition?
4	understand your testimony on this point.	4	A. We took over
5	Is it your opinion that just a moment.	5	MR. NORMAND: Objection. Asked and answered.
6	A. Take your time.	6	THE WITNESS: We took over the business. We
7	Q. So turning to Amendment Number 2 here,	7	were in the business of selling intellectual property.
8	Mr. Normand read you some text from this under paragraph		We were in the business of supporting the intellectual
9	A. I'll read it again, so we're all on the same page.	9	property. We were in the business of providing
10	It modifies the excluded assets to read:	10	
11			training. We were in the business of providing
$12^{11}$	All copyrights and trademarks, except	11	marketing materials. We couldn't do any of that without
13	for the copyrights and trademarks owned	12 13	owning the copyrights.
	by Novell as of the date of the		Q. Well, let's take SVRX licenses, for example.
14	Agreement required for SCO to exercise	14	Was SCO, at the time, in the business of entering into
15	its rights with respect to the	15	new SVRX binary resource
16	acquisition of UNIX and UnixWare	16	A. Yes.
17	technologies.	17	Q licenses?
18	What is your opinion as to the scope of that phrase,	18	MR. NORMAND: Objection to form.
19	namely, "copyrights required for SCO to exercise its	19	BY MR. MELAUGH:
20	rights," and so on? What copyrights does that include?	20	Q. Both binary and resource licenses?
21	MR. NORMAND: Objection to form, and asked and	21	A. Yes. If somebody wanted one, we were the
22	answered.	22	place they would have got it. OpenServer was an SVRX
23	THE WITNESS: I mean, I believe the scope of	23	license, and we were that was still our primary
24	the term here is all copyrights relating to the UNIX	24	product. So we were still selling source and binary
25	business source code, documentation, screens, you	25	rights to OpenServer. It was all based on SVRX
	Page 127		Page 129
1	Page 127 know, training materials, you know, that brochures,	1	Page 129 licenses.
1 2		1 2	
	know, training materials, you know, that brochures,		licenses.
2	know, training materials, you know, that brochures, marketing literature every you know, there's	2	licenses. Q. But for SVRX binary licenses at least, SCO owed an obligation to Novell to turn over revenue from those licenses; isn't that right?
2 3	know, training materials, you know, that brochures, marketing literature every you know, there's millions of copyright things in a business.	2 3	licenses. Q. But for SVRX binary licenses at least, SCO owed an obligation to Novell to turn over revenue from those licenses; isn't that right? MR. NORMAND: Objection to form.
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