

EXHIBIT 19D

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff/Counterclaim defendant,

vs.

CASE NO. 2:04CV00139

NOVELL, INC.,

Defendants/Counterclaim-Plaintiff

DEPOSITION OF KIM MADSEN

Februrary 13, 2007

Pages 1 - 242

CERTIFIED
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REPORTED BY

LAWRENCE PAUL NELSON, CSR 12144

JOB NO 191725

1	Novell, IBM, and Santa Cruz, and I'll refer to you	17:39:42
2	paragraph 1 on the first page. Do you see where it	17:39:48
3	says, "IBM will have the irrevocable fully paid up	17:39:56
4	perpetual right"?	17:40:01
5	MR. NORMAND: Objection to form.	17:40:06
6	THE WITNESS: Yes, I see that.	17:40:09
7	BY MR. BRAKEBILL:	17:40:11
8	Q. Did you have any understanding at the time	17:40:13
9	as to what that meant?	17:40:14
10	MR. NORMAND: Objection to form.	17:40:18
11	THE WITNESS: Well, I have to look at this	17:40:20
12	document in its entirety and at least this provision	17:40:25
13	in its entirety because I see that on the next page	17:40:29
14	it continues on to say, "Notwithstanding the above,	17:40:32
15	the irrevocable nature of the above right will in no	17:40:36
16	way be construed to limit Novell or SCO's right to	17:40:41
17	enjoin or otherwise prohibit IBM from violating any	17:40:42
18	and all of Novell's or SCO's rights under this	17:40:47
19	amendment X, the related agreements, or under	17:40:50
20	general patent copyright or trademark law."	17:40:53
21	Q. Did you have any understanding at the time	17:40:58
22	as to what it meant for IBM to have an irrevocable	17:40:59
23	right?	17:41:04
24	MR. NORMAND: Objection to form.	17:41:05
25	THE WITNESS: I have a general recollection	17:41:13

1	that if IBM abided by the terms and conditions of	17:41:16
2	the agreement, their license would not be revoked.	17:41:25
3	BY MR. BRAKEBILL:	17:41:52
4	Q. Now, in the context of negotiations	17:41:53
5	concerning amendment X, were there any discussions	17:41:56
6	with Novell concerning a subsequent amendment to the	17:42:00
7	asset purchase agreement?	17:42:03
8	A. I'm sorry. I didn't hear your question.	17:42:05
9	Q. In the context of negotiations concerning	17:42:08
10	amendment X do you recall if there were any	17:42:11
11	discussions with Novell concerning the subsequent	17:42:16
12	amendment to the asset purchase agreement?	17:42:21
13	A. I have no specific recollection of	17:42:27
14	conversations.	17:42:30
15	Q. Is it fair to say you weren't involved in	17:42:30
16	any conversations related to an amendment number 2?	17:42:32
17	A. No, that's not fair to say. I just have	17:42:37
18	no specific recollections of conversations regarding	17:42:41
19	amendment 2.	17:42:47
20	Q. Is it that you have no specific	17:42:50
21	recollections at all of any conversations regarding	17:42:52
22	amendment number 2 at the time?	17:42:55
23	MR. NORMAND: Object to the form.	17:42:58
24	THE WITNESS: No. I mean as I sit here	17:43:06
25	today I cannot recall any specific conversations	17:43:08

1	regarding amendment 2.	17:43:13
2	BY MR. BRAKEBILL:	17:43:14
3	Q. To clarify, you don't have any specific	17:43:17
4	recollections contemporaneous with amendment number	17:43:21
5	2 of conversations with representatives of Novell	17:43:24
6	about amendment 2; is that right?	17:43:28
7	MR. NORMAND: Objection to form.	17:43:32
8	THE WITNESS: That's right.	17:43:33
9	BY MR. BRAKEBILL:	17:43:35
10	Q. And so as you sit here today you can't	17:43:39
11	tell me anything specific that Novell may have told	17:43:41
12	you or anyone else at Santa Cruz regarding amendment	17:43:45
13	number 2; is that right?	17:43:48
14	MR. NORMAND: Object to the form.	17:43:51
15	THE WITNESS: No, I don't recall anything	17:43:57
16	specific.	17:43:59
17	BY MR. BRAKEBILL:	17:44:00
18	Q. Now, your belief is that amendment number	17:44:04
19	2's purpose was to confirm that UNIX copyrights are	17:44:06
20	transferred from Novell to Santa Cruz; is that	17:44:13
21	right?	17:44:23
22	A. I would need to see amendment 2 to opine	17:44:23
23	as to its intent.	17:44:28
24	Q. Do you recall addressing this in your	17:44:30
25	declaration a couple months ago?	17:44:32

1	MR. NORMAND: Objection to form.	17:44:34
2	THE WITNESS: Yes, I do remember.	17:44:35
3	BY MR. BRAKEBILL:	17:44:37
4	Q. And do you remember that you said, "My	17:44:37
5	understanding from negotiations and discussions was	17:44:39
6	that amendment 2 was intended to confirm among other	17:44:43
7	things the parties' intent and agreement that Santa	17:44:46
8	Cruz had obtained ownership of the UNIX copyrights	17:44:49
9	under the APA"?	17:44:54
10	A. To confirm among other things, yes, but I	17:44:56
11	think I had the benefit of seeing amendment 2 at	17:44:59
12	that time.	17:44:59
13	Q. Why was there a need to confirm the issue	17:45:03
14	of UNIX copyrights in amendment number 2 in your	17:45:07
15	view?	17:45:11
16	MR. NORMAND: Objection to form.	17:45:12
17	THE WITNESS: Because the cast of	17:45:15
18	characters that we had been dealing with at Novell	17:45:16
19	were not -- were no longer at Novell or they were no	17:45:22
20	longer the people we were dealing with at Novell.	17:45:29
21	We now had, you know, Alison Lisbon and new people	17:45:32
22	at Novell and we needed to make sure that they	17:45:36
23	understood how the parties had been interpreting the	17:45:39
24	APA.	17:45:46
25	BY MR. BRAKEBILL:	17:45:47

1	Q. Didn't you tell me that everyone was on	17:45:47
2	the same page what the intent of the original asset	17:45:50
3	purchase agreement was?	17:45:54
4	A. Yes, absolutely. At the time we put the	17:45:55
5	asset purchase agreement in place everybody was on	17:45:58
6	the same page, but Alison Lisbon was not part of	17:46:02
7	those conversations.	17:46:06
8	Q. Did you recall having conversations with	17:46:07
9	Steve Sabbath prior to amendment 2 concerning his	17:46:10
10	view of whether or not the original asset purchase	17:46:13
11	agreement transferred the UNIX copyrights from	17:46:17
12	Novell to Santa Cruz?	17:46:20
13	A. I'm sorry. Can you restate that?	17:46:21
14	Q. Do you recall having conversations with	17:46:24
15	Steve Sabbath prior to amendment 2 concerning his	17:46:26
16	view of whether or not the original asset purchase	17:46:30
17	agreement transferred the UNIX copyrights from	17:46:34
18	Novell to Santa Cruz?	17:46:44
19	A. I don't have any specific recollection of	17:46:47
20	discussing this with Steve, although Steve, you	17:46:50
21	know, it is my understanding that Steve understood	17:46:56
22	that the copyrights were being transferred as part	17:46:58
23	of the UNIX and UnixWare asset purchase agreement.	17:47:03
24	Q. And earlier today we went over an under	17:47:09
25	oath declaration from Mr. Sabbath concerning a view	17:47:13

1	that he's taken or agreed to concerning the UNIX	17:47:18
2	copyrights. Do you recall that?	17:47:20
3	MR. NORMAND: Objection to form.	17:47:23
4	THE WITNESS: Yes.	17:47:24
5	BY MR. BRAKEBILL:	17:47:25
6	Q. And at least in the under oath	17:47:25
7	declarations that we looked at, Mr. Sabbath took a	17:47:29
8	different view as to whether or not the UNIX	17:47:31
9	copyrights were transferred from Novell to Santa	17:47:33
10	Cruz; correct?	17:47:37
11	MR. NORMAND: Objection to form, asked and	17:47:37
12	answered.	17:47:40
13	THE WITNESS: I don't believe that Steve	17:47:40
14	understood the intent of the declaration that he was	17:47:42
15	signing in when was this? December of '03. And	17:47:46
16	Steve's understanding contemporaneous with the	17:47:51
17	signing of the asset purchase agreement was that the	17:47:55
18	copyrights were transferring.	17:47:57
19	So I can't speak to what was in Steve's	17:48:01
20	mind when he signed to this under oath declaration.	17:48:03
21	I do know that he was retiring from the company.	17:48:09
22	There was a lot going on.	17:48:13
23	So, you know, I'm not sure how much, you	17:48:17
24	know, attention, how much review he provided this	17:48:20
25	declaration.	17:48:26

1	BY MR. BRAKEBILL:	17:48:37
2	Q. Is it fair to say you don't know what	17:48:37
3	Mr. Sabbath's intent was when he signed the	17:48:40
4	declaration that we discussed earlier today?	17:48:42
5	MR. NORMAND: Objection to form.	17:48:46
6	THE WITNESS: I know Steve had a good	17:48:56
7	rapport with Ron Lauderdale at IBM and I think he,	17:48:59
8	you know, was trying to be helpful.	17:49:05
9	BY MR. BRAKEBILL:	17:49:10
10	Q. Are you speculating?	17:49:10
11	A. But I'm speculating.	17:49:12
12	Q. You don't know what was in Steve's mind --	17:49:14
13	A. I don't. I already said that I don't know	17:49:15
14	what was in Steve's mind when he signed this.	17:49:17
15	Q. So when you said, "I don't believe Steve	17:49:21
16	understood this," you actually don't know whether or	17:49:23
17	not Steve understood what he was signing; correct?	17:49:27
18	MR. NORMAND: Objection to form.	17:49:30
19	THE WITNESS: No, I can't say with any	17:49:31
20	certainty what Steve understood when he signed this.	17:49:34
21	BY MR. BRAKEBILL:	17:49:36
22	Q. Are you aware of a phone conversation	17:49:37
23	between Steve Sabbath and Alison Lisbon preceding	17:49:39
24	the execution of amendment number 2 concerning the	17:49:43
25	subject of the UNIX copyrights?	17:49:47

C E R T I F I C A T I O N

I, LAWRENCE PAUL NELSON, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, do hereby certify: That the witness in the foregoing deposition was administered an oath to testify the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me and was thereafter transcribed under my direction into typewriting; that the foregoing is a complete and accurate record of said testimony; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself/herself of the opportunity to sign or the signature has been waived.

I further certify that I am not of counsel nor attorney for any of the parties in the foregoing deposition and caption named nor in any way interested in the outcome of the cause named in said caption.

DATED:

FEB 16 2007

LAWRENCE PAUL NELSON, CSR NO. 12144

