EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC., by and through the Chapter 11 Trustee in Bankruptcy, Edward N. Cahn, Plaintiff/Counterclaim-Defendant, vs. NOVELL, INC., a Delaware corporation, Defendant/Counterclaim-Plaintiff.	**SCO'S SUR-REPLY IN OPPOSITION TO "NOVELL'S MOTION IN LIMINE NO. 1 "** Civil No. 2:04 CV-00139 Judge Ted Stewart

Novell's reply on its purported motion in limine[1] is based on the single, false premise that The SCO Group, Inc. ("SCO") did not appeal from the dismissal of its slander of title claim when it appealed from the District Court's order granting Novell's motion for summary judgment seeking dismissal of SCO's slander of title claim.

Novell's premise, to be clear, thus ignores "Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance" (Docket No. 275); ignores the District Court's decision granting the motion, stating that "Novell is entitled to summary judgment on SCO's Claim for Relief for slander of title because SCO cannot demonstrate that Novell's assertions of copyright ownership were false" (Opinion at 62); ignores that the same first paragraph of the appealed Final Judgment dismissed both the slander of title and specific performance claims on the basis of that ruling; and yet pretends that SCO's successful appeal on the copyright ownership issue applies only to specific performance.

First, Novell says that "SCO has not even attempted to argue that the Tenth Circuit reversed the judgment on the copyright ownership portions of SCO's unfair competition and covenant of good faith claims." Not so. SCO's opposition memorandum (at 2 n.2) makes clear that the Tenth Circuit's reversal of summary judgment reverses the counts dismissed solely on the basis of the copyright ownership decision, except the unfair competition count, which was also dismissed on other grounds.

Second, Novell misconstrues Procter & Gamble Co. v. Haugen, 317 F.3d 1121 (10th Cir. 2003) ("P&G II"). SCO maintains that The Tenth Circuit's reversal of the copyright ownership summary judgment is a direct reversal of the dismissal of the counts to which that summary

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[1] Novell tries to defend its failure to file an actual motion in limine by claiming to enforce a summary judgment, but the Tenth Circuit has expressly reversed the summary judgment Novell purports to be enforcing. SCO Group, Inc. v. Novell, Inc., 578 F.3d 1201, 1227 (10th Cir. 2009) (we "REVERSE The district court's entry of summary judgment on ownership of the Unix and UnixWare copyrights")

judgment motion was directed and which the District Court had dismissed based upon its erroneous determination as to copyright ownership. In P&G II, the Tenth Circuit went even further, holding that when its prior ruling "resuscitated P&G's § 43(a) Lanham Act claim, that part of the mandate might plausibly be read to have restored a contributory infringement claim under § 43(a)," even though "P&G does not dispute that it never used the term 'contributory infringement' in its previous pleadings." P&G II, 317 F.3d at 1129.

Third, Novell asserts that the Tenth Circuit did not analyze whether the slander of title judgment should be reversed, and referred to the claim only in the statement of facts. Novell ignores that appellate courts do not decide legal issues in a vacuum. The Tenth Circuit spent the bulk of its Opinion discussing that the District Court erred in deciding that Novell, not SCO, owns the copyrights as a matter of law. That is the analysis of whether the slander of title dismissal should be reversed, because it was the sole basis on which that count was dismissed. The Tenth Circuit did not need to do more in its opinion than note, as it did, that "[h]aving found that SCO's assertions of copyright ownership were false, the court granted summary judgment to Novell on SCO"s claims alleging slander of title and seeking specific performance." 578 F.3d at 1207.[2] If the Tenth Circuit was dealing only with specific performance, for example, there was absolutely no reason for it to analyze the question of Section 204 of the Copyright Act, let alone for it to conclude that the amended APA satisfies the Section.

Fourth, Novell suggests that "a trial concerning specific performance will necessarily require a decision on whether SCO had a contractual right to ownership." This argument even further underscores Novell's failure to afford meaning to the language of the Tenth Circuit's

[2] The opinion asserts no other grounds for dismissing the claim for slander of title, and Novell did not propose any on appeal. The reference in Novell's reply to "good faith interpretation of contract" pertains to the District Court's ruling on the count for breach of the implied duty for good faith and fair dealing, and even as to that count, as discussed in SCO's opposition to Motion in Limine No. 4.

mandate, which identifies as separate issues "(1) the ownership of the UNIX and UnixWare copyrights" and "(2) SCO's claim seeking specific performance." Id. at 1227. Novell's interpretation thus renders a nullity the very first issue the Tenth Circuit remanded for trial. The parties made clear on appeal that the issue of copyright ownership is whether SCO already owns the copyrights. The count for specific performance is expressly styled as an "alternative count" because it becomes relevant only if SCO is found not to currently own the copyrights but to instead have an enforceable right to demand their future delivery. There is nothing in the Tenth Circuit's opinion or mandate that suggests its remand on copyright ownership is limited to the alternative count of specific performance and excludes the primary count of slander of title, which was the vehicle for determining the current state of copyright ownership.

Fifth, it tries to downplay the fact, but Novell has to concede that it recognized – and even advocated to the Bankruptcy Court – that the trial would include slander of title. In denying Novell's Rule 60 motion, this Court agreed. Neither the appellate briefs nor the Tenth Circuit's opinion, of course, have changed. The Rule 60(b) motion Novell brought does nothing to obscure that the parties, Novell included, recognized that a reversal on copyright ownership reversed the dismissal of the counts as to which that summary judgment motion was directed. Slander of title is part and parcel of the determination of copyright ownership, whereas recalculation of a royalty claim as to which Novell never appealed is not. In sum, the District Court did not enter any decision on copyright ownership separate from Novell's motion for summary judgment on SCO's claim for slander of title; SCO therefore did not appeal any such separate decision; and the Tenth Circuit's reversal of the entry of summary judgment on the claim for slander of title not only vacates the reasoning behind that decision, but also vacates the decision's effect in determining SCO's legal claims – claims that are now to be tried.

CONCLUSION

SCO respectfully submits, for the reasons set forth above and in its Opposition Memorandum, that the Court should deny Novell's "Motion in Limine No. 1."

DATED this 16th day of February, 2010.

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CERTIFICATE OF SERVICE

I, Brent O. Hatch, hereby certify that on this 16th day of February, 2010, a true and correct copy of the foregoing **SCO'S SUR-REPLY IN OPPOSITION TO "NOVELL'S MOTION IN LIMINE NO. 1"** was filed with the court and served via electronic mail to the following recipients:

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