

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,)	
)	
Plaintiff/)	2:04CV00139
Counterclaim-Defendant,)	
)	
vs.)	
)	
NOVELL, INC.,)	
)	
Defendant/)	
Counterclaim-Plaintiff.)	
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Friday, March 23, 2007
Elizabeth, New Jersey
10:01 a.m.

Videotaped Deposition of BURT LEVINE,
taken by Defendant/Counterclaim-Plaintiff, pursuant
to Notice, held at the Sheraton Four Points Hotel,
901 Spring Street, Elizabeth, New Jersey, on Friday,
March 23, 2007 at 10:01 a.m. before Josephine H.
Fassett, a Certified Shorthand Reporter and Notary
Public of the State of New York.

SHARI MOSS & ASSOCIATES
Certified Shorthand Reporters
877 Cowan Road, Suite A
Burlingame, California 94010
(415) 402-0004

1 don't know if we got the ownership from AT&T, I
2 think we got the rights to use it in the business
3 when we went over. But whether there were any
4 actual patents that USL was the owner of, I don't
5 have a recollection of that.

6 Q They could have been but you're just
7 not sure?

8 A That's correct.

9 Q Do you know if USL had any
10 copyrights while you were working for USL relating
11 to UNIX?

12 MR. NORMAND: Objection to form.

13 A Again I believe they did, I believe
14 they did.

15 Q And do you know if the copyright
16 registrations for those copyrights or the original
17 certificates for those copyrights were maintained
18 in New Jersey where you were?

19 A I don't. I believe that the
20 copyrights may have still have been in New York at
21 that time.

22 Q At some point in time while you were
23 at USL would you have gotten the copyright
24 registrations and original copyright certificates
25 in the New Jersey office for USL?

1 A I can't answer that, I don't know.

2 Q You don't remember?

3 A I don't remember.

4 Q It's possible that the copyright
5 registrations and original copyright certificates
6 could have been in New Jersey when you were with
7 USL?

8 MR. NORMAND: Objection to form.

9 A It's possible, more likely they were
10 in New York.

11 Q Now do you recall that I believe in
12 1993 USL and its UNIX assets were purchased by
13 Novell?

14 A Yes.

15 Q Do you recall what the purchase
16 price was?

17 A I don't.

18 Q When Novell purchased USL and its
19 UNIX assets in 1993, did you move to Novell?

20 A Yes.

21 Q And when I say "moved to Novell," I
22 meant you went to work for Novell in 1993; is that
23 right?

24 A That's correct.

25 Q Did any other lawyers for USL begin

1 to work for Novell after Novell purchased USL and
2 its UNIX assets?

3 A Yes.

4 Q Okay. Which other lawyers for USL
5 went to Novell?

6 A One of them was Ted Weitz. And the
7 other was Sandy Tannenbaum who in the interim from
8 the time that USL was formed and the time that the
9 Novell deal with USL was, he took Snedeker's place
10 I believe and he was made a, a director or a vice
11 president, I forget which.

12 Q After the purchase of USL and its
13 assets by Novell in 1993, did you stay in your New
14 Jersey office of USL?

15 A Yes.

16 Q And I take it Mr. Weitz and
17 Mr. Tannenbaum, the other two USL lawyers, stayed
18 in the New Jersey offices of USL after the Novell
19 purchase of USL?

20 A Yes, they did.

21 Q Did the UNIX business itself that
22 was USL also stay in New Jersey after the Novell
23 purchase of USL?

24 A Primarily, yes.

25 Q And when you say "primarily," I take

1 it that perhaps some other part of the business
2 might have been elsewhere; is that correct?

3 A Yeah. As I understood it, the
4 Novell product NetWare and various appendages of
5 that stayed in Utah whereas the UNIX part stayed
6 primarily in New Jersey. There may have been
7 salespeople, marketing people of UNIX out in Utah.
8 Again, my memory isn't great on that one.

9 Q But the UNIX business primarily was
10 back in New Jersey with you; is that right?

11 A Yes.

12 Q Is it fair to say that the legal
13 team working on the UNIX business was also back
14 with you in New Jersey after the Novell purchase
15 of USL?

16 A Do you mean Weitz and -- yeah, there
17 were three of us as I recall, Weitz, myself and
18 Tannenbaum.

19 Q Now you mentioned that there might
20 have been some salespeople or marketing people for
21 UNIX who were out in Utah; is that right?

22 A No, I was just guessing that. You
23 wanted to know where the division was and I said
24 if there were people for UNIX out there, it
25 probably would have been salespeople.

1 Q You're not sure if there were any --
 2 sorry.
 3 A No, I'm not sure.
 4 Q You're not sure if there were any
 5 UNIX business persons who were operating out in
 6 Utah where Novell's business was headquartered?
 7 A No, I'm not sure now.
 8 Q Did you have an understanding that
 9 prior to Novell's purchase of USL in 1993 that
 10 Novell was headquartered in Utah?
 11 A I believe so.
 12 Q Did you have any understanding as to
 13 whether there was an existing Novell Legal
 14 Department at the time of the USL purchase by
 15 Novell?
 16 A I don't know if it was before or
 17 after the merger that I found that out, I had
 18 assumed that there was.
 19 Q After the purchase of USL by Novell,
 20 did you come to an understanding that there were
 21 other lawyers for Novell who were working out in
 22 Utah?
 23 A You mean after, after we were all
 24 Novell?
 25 Q Yes.

1 A Yes.
 2 Q Do you know how many lawyers were
 3 working for Novell in Utah?
 4 A No. No. At least four, maybe more.
 5 Q Is it fair to say that you and
 6 Mr. Weitz and Mr. Tannenbaum in New Jersey were
 7 continuing to head up the legal efforts relating
 8 to UNIX after Novell's purchase of USL in 1993?
 9 A That was my understanding.
 10 Q After the purchase of USL and its
 11 UNIX assets by Novell in 1993, did you and the
 12 rest of the USL Legal Department back in New
 13 Jersey continue to maintain legal files for the
 14 UNIX business that was part of USL?
 15 A Well, we worked with the same group
 16 in Greensboro and they would have maintained those
 17 files, I don't think there was any change
 18 physically in that aspect of it when these various
 19 transactions took place.
 20 Q To the extent that there were any
 21 patents or copyright registrations or original USL
 22 copyright certificates relating to UNIX, would
 23 those documents have been maintained by you and
 24 the rest of the USL Legal Department back in New
 25 Jersey after the Novell acquisition?

1 A No, we still didn't maintain those
 2 ourselves. I think there was a separate
 3 department in AT&T that maintained these. Again,
 4 this is assuming that these were the original UNIX
 5 registrations that came over from one entity to
 6 another.
 7 Q To the best of your understanding,
 8 is it the case that to the extent there was any
 9 copyright registration, copyright certificate or
 10 patents for AT&T or USL at the time of the Novell
 11 purchase of USL, those legal documents would have
 12 been maintained in the New York office of AT&T?
 13 A I think by that point being that we
 14 were spun off they would have been maintained with
 15 us.
 16 Q To the extent any of those
 17 documents, patents, copyright registrations or
 18 original copyright certificates existed when you
 19 were at USL, those documents would have been back
 20 in New Jersey with USL; is that right?
 21 A If they originated after say 1991
 22 when the USL transaction took place, I would say
 23 so.
 24 Q And if they had originated with AT&T
 25 they would have been maintained with AT&T; is that

1 right?
 2 A I believe so.
 3 Q Do you recall after moving from USL
 4 to Novell ever sending anything like copyright
 5 certificates or copyright registrations or patents
 6 to Novell --
 7 A I --
 8 Q -- in Utah?
 9 A I don't remember that.
 10 Q To the best of your belief those
 11 would have been maintained in New Jersey and not
 12 sent to Utah?
 13 A I could only speculate on that, I
 14 don't know.
 15 Q Based on your understanding as to
 16 how the legal department operated for USL, is it a
 17 fair statement that those likely remained in New
 18 Jersey?
 19 A I would say it's a strong
 20 possibility, again, I have, you know, no
 21 information one way or the other.
 22 Q Do you have an understanding that in
 23 1995 Novell then sold certain UNIX assets to a
 24 company called the Santa Cruz Operation?
 25 MR. NORMAND: Objection to form.

1 A I did.
 2 Q After the purchase by Santa Cruz of
 3 certain UNIX assets from Novell, did you initially
 4 continue to work with Novell back in New Jersey?
 5 MR. NORMAND: Objection to form.
 6 A Excuse me, what date are we, what
 7 time frame are we talking now?
 8 Q 1995.
 9 A After the --
 10 Q Original. Let me just -- I'll
 11 clarify it with a date.
 12 A Okay.
 13 Q Do you have an understanding that on
 14 September 19th, 1995 Novell sold certain UNIX
 15 assets to a company called Santa Cruz?
 16 MR. NORMAND: Objection to form.
 17 A Yes.
 18 Q Immediately after that purchase on
 19 September 19, 1995 did you continue to work with
 20 Novell back in New Jersey?
 21 A As I recall I did. In the same
 22 facility --
 23 Q Right.
 24 A -- I remember I did.
 25 Q Were you still in Summit, New Jersey

1 at that point in time?
 2 A I believe we were, yeah.
 3 Q A few months or so after the
 4 purchase by Santa Cruz of certain UNIX assets from
 5 Novell did you then move to Santa Cruz, meaning
 6 you began to work for Santa Cruz?
 7 A Yes.
 8 Q Do you remember approximately when
 9 that happened?
 10 A It was a transition time and by
 11 February 1st of 2006 I know that the three of us
 12 in the Legal Department were considered SCO
 13 employees, whether there was anything that was
 14 formalized on company records before that, I don't
 15 know.
 16 Q Okay. I think you said 2006, you
 17 meant February 1st, 1996, right?
 18 A Yeah.
 19 Q Just so the record is clear.
 20 A How time flies. Yeah.
 21 Q When you did transition to Santa
 22 Cruz in approximately February of 1996, did you
 23 continue to work in New Jersey?
 24 A Yes.
 25 Q Did Mr. Tannenbaum and Mr. Weitz

1 continue to work for Santa Cruz in New Jersey?
 2 A Weitz did. I think sometime in 1996
 3 Tannenbaum left the company and I think went back
 4 to AT&T.
 5 Q When you say Mr. Tannenbaum left the
 6 company, you meant he left Novell?
 7 A He left SCO.
 8 Q Oh, okay. So Mr. Tannenbaum went to
 9 Santa Cruz and then went back to AT&T?
 10 A I think that was the sequence of it,
 11 yeah.
 12 Q Now you said that you, after the
 13 purchase by Santa Cruz you went -- you stayed in
 14 New Jersey, right?
 15 A Yes.
 16 Q Okay. Did the rest of the USL
 17 business that was part of Novell in New Jersey
 18 also continue to reside in New Jersey?
 19 A There was a big development group
 20 that was doing the UNIX software development and I
 21 believe most, if not all of them went over to SCO.
 22 Q And they stayed in New Jersey?
 23 A And they stayed in New Jersey.
 24 Q After you went to work for -- after
 25 you went from Novell to Santa Cruz, did you keep

1 your various UNIX business files with you?
 2 A Yeah, whatever we had we kept.
 3 Q And would you and the rest of the
 4 USL Legal Department that was part of Novell have
 5 kept any files that they had including files such
 6 as copyright registrations, copyright certificates
 7 or patents that USL had been maintaining as part
 8 of Novell?
 9 A Yeah, yeah, I think we would have
 10 kept them in the same place if we had them.
 11 Q Now, Mr. Levine, you're a lawyer by
 12 training; is that right?
 13 A Yes.
 14 Q Okay. How long did you practice as
 15 a lawyer or are you still practicing as a lawyer?
 16 A Well, I'm still a member of the New
 17 Jersey bar, but the last time I did any legal work
 18 really was the middle of 2002.
 19 Q Are you retired?
 20 A Semi.
 21 Q When did you graduate from law
 22 school?
 23 A 1962.
 24 Q Where did you graduate from law
 25 school?

1 A Yes.
 2 Q Do you have any understanding that
 3 Novell -- well, scratch that.
 4 Do you have any understanding as to
 5 who within Novell in the Legal Department was
 6 working on this contract?
 7 A I recall that I worked on it and I
 8 don't -- there were attorneys in Utah who also had
 9 input to this as far as I remember.
 10 Q Do you recall the name David
 11 Bradford?
 12 A Yes.
 13 Q Do you know who David Bradford is?
 14 A He was the head of the legal
 15 department in -- of Novell in Utah I think at that
 16 time.
 17 Q Mr. Bradford was the general counsel
 18 of Novell at the time of this agreement; is that
 19 right?
 20 MR. NORMAND: Object to the form.
 21 A I don't remember if that's true or
 22 not, I believe it was.
 23 Q Do you recall who, if anyone else in
 24 the Novell Legal Department had any role in the
 25 September 1995 contract?

1 A I don't remember which of his
 2 attorneys would have worked on this, if that's
 3 your question.
 4 Q Do you have any understanding as to
 5 whether Novell hired outside lawyers to help in
 6 the negotiation and drafting of this contract?
 7 A I believe we did, yeah.
 8 Q And do you have an understanding
 9 that Novell hired the law firm of Wilson Sonsini
 10 Goodrich & Rosati to help negotiate and draft this
 11 contract?
 12 A I believe that's correct.
 13 Q You had worked with Wilson Sonsini
 14 before in your transactional experience at
 15 USL-Novell; isn't that right?
 16 A I don't know that I did, maybe the
 17 Tannenbaum did.
 18 Q Did you work in any way on the
 19 USL-Novell transaction?
 20 A I don't recall.
 21 Q In any event, you do recall that
 22 Novell had hired Wilson Sonsini to negotiate and
 23 draft this contract?
 24 A Yes.
 25 Q Do you know the name Tor Braham?

1 A I've heard the name, yes.
 2 Q Do you know who Tor Braham is?
 3 A I've never met him, no. I've heard
 4 the name, that's about it.
 5 Q Do you understand that he is a
 6 lawyer from Wilson Sonsini that Novell had hired
 7 to work on this contract?
 8 A I've heard it, I don't know that on
 9 my own.
 10 Q Do you know the name Aaron Alter?
 11 A Excuse me?
 12 Q Do you know the name Aaron Alter?
 13 A No.
 14 Q As you sit here today, do you recall
 15 what involvement, if any, you had in drafting or
 16 contributing any portion of this particular
 17 agreement dated September 19th, 1995?
 18 A I know that I worked on drafting
 19 some of the provisions, I don't know which ones in
 20 particular.
 21 Q And how is it that you recall that
 22 you were involved in drafting some provisions?
 23 A I was asked to do it by the
 24 negotiators for Novell.
 25 Q And as you sit here today are you

1 sure that any drafting that you did relating to
 2 the Novell-Santa Cruz deal was in connection with
 3 this particular September 19, 1995 contract as
 4 opposed to an amendment to this contract?
 5 A No, I can't recall specifically, you
 6 know, what work I did on one versus the other.
 7 Q Now do you -- you have read this
 8 September 19, '95 Agreement I take it at some
 9 point in time?
 10 A Eleven, twelve years ago.
 11 Q That was a long time ago?
 12 A Yeah.
 13 Q Do you remember any particular
 14 provisions in this contract as you sit here today?
 15 A No.
 16 Q Memories can fade over time?
 17 A Yes.
 18 Q And as an experienced lawyer would
 19 you agree with me that if you wanted to go back
 20 after the fact and find out what the parties'
 21 rights and obligations were under this contract
 22 you could go read the contract?
 23 MR. NORMAND: Objection to form.
 24 A Well, that would be one source,
 25 yeah.

1 that right?
 2 A Eight Roman numerals, yes.
 3 Q Right. And those are assets of
 4 substance; isn't that right?
 5 MR. NORMAND: Objection to form.
 6 A Intellectual property, yes,
 7 definitely.
 8 Q Okay. And if you look at Roman V it
 9 is entitled Intellectual Property, correct?
 10 A Right.
 11 Q And it lists two types of excluded
 12 intellectual property, one, all copyrights and
 13 trademarks except for the trademarks UNIX and
 14 UnixWare, and two, all patents; do you see that?
 15 A I see that.
 16 Q Okay. What is listed is (a) and (b)
 17 of Roman V are specifically excluded assets under
 18 this contract, would you agree with me?
 19 A Specifically listed assets, yes.
 20 Q Specifically listed as excluded --
 21 A Right.
 22 Q -- assets, correct?
 23 MR. NORMAND: Objection to form.
 24 BY MR. BRAKEBILL:
 25 Q In reading this do you understand

1 that Novell is excluding all patents from this
 2 asset transfer?
 3 A I understand what the agreement
 4 says, I understand what the exclusions are in the
 5 document.
 6 Q Okay. And based on reading this
 7 exclusion in the contract do you understand that
 8 all copyrights and trademarks except for the
 9 trademarks UNIX and UnixWare are excluded from
 10 this asset transfer?
 11 A No, I don't.
 12 MR. NORMAND: Objection to form.
 13 Objection to the extent it calls for a
 14 legal conclusion.
 15 BY MR. BRAKEBILL:
 16 Q You disagree with the language in
 17 this schedule; is that right?
 18 MR. NORMAND: Objection to form.
 19 A No, I don't disagree that these are
 20 listed here, I disagree that in the context of
 21 this agreement that this is, that this is the
 22 whole story.
 23 Q Do you disagree that the contract on
 24 September 19th, 1995 specifically excluded all
 25 copyrights and trademarks except for the

1 trademarks UNIX and UnixWare?
 2 MR. NORMAND: Objection to form.
 3 Objection to the extent it calls for a
 4 legal conclusion.
 5 A I cannot answer that Yes or No.
 6 Q Why can't you answer that Yes or No?
 7 A Because there's a premise that
 8 hasn't been stated here, we're talking about a
 9 written document and we're talking about the
 10 party's intent.
 11 Q Is this document, Schedule 1.1(b),
 12 unclear to you?
 13 A Yes.
 14 Q How is it unclear to you?
 15 A The asset that purports to be
 16 transferred from Novell to SCO in the intent of
 17 the parties will ex -- will include, to my reading
 18 or to my knowledge, even though I don't remember
 19 the specific terms of this agreement, the
 20 intention was to convey all of these ownership and
 21 auxillary ownership rights to the asset including
 22 copyright. And the fact that there is this kind
 23 of an exclusion there tells me that there is an
 24 ambiguity in this agreement or a mutual mistake
 25 which wipes out any kind of an integration clause.

1 I don't agree that that's what the agreement
 2 means.
 3 Q Can you tell me in your view what is
 4 ambiguous about the exclusion on Schedule 1.1(b)
 5 of, quote, all copyrights and trademarks except
 6 for the trademarks UNIX and UnixWare?
 7 MR. NORMAND: Objection to form.
 8 Mischaracterizes his testimony.
 9 A Can you repeat that question,
 10 please?
 11 Q Can you tell me in your view what is
 12 ambiguous about the exclusion on Schedule 1.1(b)
 13 of, quote, all copyrights and trademarks except
 14 for the trademarks UNIX and UnixWare?
 15 A I don't think you can exclude a
 16 copyright in this kind of an asset transfer. I
 17 think you can exclude a copyright if you're
 18 transferring the physical manifestation of the
 19 asset, but when you purport to transfer the whole
 20 asset and all the business and everything else I
 21 think inherent in that is going to be the
 22 copyright and it's a contradiction in terms for
 23 the copyright to be excluded like this.
 24 Q So I take it if you had seen this in
 25 the course of the negotiations you would have

1 MR. BRAKEBILL: Objection to form.
2 Foundation. Calls for speculation.
3 A Well, in my mind this is, this is
4 confirmatory of my view that the, the copyrights
5 that are now specified in this amendment would
6 have been transferred in any event because of the
7 scope of the rights in the transfer of the assets,
8 and this is confirmatory of that. This leaves no
9 doubt on black and white that, that this is what
10 was intended.

11 Q I'd like to ask you, Mr. Levine,
12 about Exhibit 202 which should be in your pile
13 somewhere.

14 Exhibit 202 has the fax cover sheet
15 indicating that it's from Burt Levine, yourself,
16 to Aaron Alter.

17 A Okay.

18 Q Dated September 18th, 1995. And --

19 A Yes.

20 Q -- attached to the fax cover sheet
21 is I believe your markup of Schedule 1.1(a) and
22 the Seller Disclosure Statement, do you see that?

23 A Yes.

24 Q Do you remember reviewing the
25 document earlier?

1 A Yes.

2 Q At any time when you were reviewing
3 this document in 1995 was it your view that Novell
4 was intending to retain the UNIX or UnixWare
5 copyrights under the APA?

6 MR. BRAKEBILL: Form.

7 A Not in the least, no.

8 THE REPORTER: I'm sorry, I didn't
9 hear your answer.

10 THE WITNESS: "Not in the least,
11 no."

12 BY MR. NORMAND:

13 Q At any time when you were reviewing
14 the schedule attached as part of Exhibit 202, was
15 it your view that the language of the APA served
16 to retain for Novell the UNIX or UnixWare
17 copyrights?

18 MR. BRAKEBILL: Form.

19 A Do you mean the APA in its original
20 form?

21 Q In the form that you were reviewing
22 it in the markup reflected in Exhibit 202.

23 You want the question read back?

24 A Please.

25 Q At any time when you were reviewing

1 the schedule attached as part of Exhibit 202, was
2 it your view that the language of the APA served
3 to retain for Novell the UNIX or UnixWare
4 copyrights?

5 MR. BRAKEBILL: Form.

6 A No. No.

7 Q I'm going to show you, Mr. Levine,
8 or have you turn your attention to Exhibit 203.

9 A (Complies.)

10 Q Exhibit 203 is the document with a
11 telecopy cover sheet under Wilson Sonsini
12 letterhead to you from Shannon Whisenant dated
13 September 18th, 1995, and attached to the cover
14 sheet is a version of Schedule 1.1(a) of the APA,
15 and it's stamped Draft on each page.

16 A Okay.

17 Q And the same is true for Schedule
18 1.1(b). Do you remember reviewing this document
19 this morning?

20 A Yes.

21 Q Was it ever your view in reviewing
22 the document attached as part of Exhibit 203 that
23 Novell intended to retain the UNIX or UnixWare
24 copyrights under the APA?

25 A No.

1 MR. BRAKEBILL: Form.

2 BY MR. NORMAND:

3 Q Was it ever your view when reviewing
4 the language of the document attached as Exhibit
5 203 that the language of the APA served to retain
6 for Novell the UNIX or UnixWare copyrights?

7 MR. BRAKEBILL: Form.

8 A No.

9 Q I direct your attention, Mr. Levine,
10 to Exhibit 204.

11 A (Complies.)

12 Q Exhibit 204 is the document with the
13 cover sheet under Novell's letterhead dated
14 September 15th, 1995 from you to Shannon
15 Whisenant, and attached to the document, among
16 other things, is your markup of the Seller
17 Disclosure Schedule and towards the back half of
18 the document your handwriting appears?

19 A Yes.

20 Q Do you remember reviewing this
21 document this morning?

22 A Yes.

23 Q Or this afternoon?

24 A Yes.

25 Q Was it your view at any time in