

EXHIBIT 4

Brent O. Hatch (5715)
Mark F. James (5295)
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Robert Silver (admitted pro hac vice)
Edward Normand (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Stuart H. Singer (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard – Suite 1200
Ft. Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

Stephen N. Zack (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
Bank of America Tower – Suite 2800
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Attorneys for The SCO Group, Inc.

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

THE SCO GROUP, INC.,

Plaintiff/Counterclaim Defendant,

v.

NOVELL, INC.,

Defendant/Counterclaim-Plaintiff.

DECLARATION OF KIM MADSEN

Case No. 2:04CV00139

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, KIM MADSEN, declare as follows:

1. I submit this Declaration in connection with The SCO Group, Inc. v. Novell, Inc., Case No. 2:04CV00139DAK (D. Utah). I have previously signed a Declaration in connection with this lawsuit and with The SCO Group, Inc. v. International Business Machines Corporation, Case No. 2:03CV0294DAK (D. Utah).

2. I describe my education and work history in my previous Declaration, which I incorporate and adopt here.

3. In 1995, I was employed as a Manager in the Law and Corporate Affairs group at The Santa Cruz Operation, Inc. ("Santa Cruz"). I worked with substantially with Steve Sabbath, the General Counsel for Santa Cruz.

4. As I explained in my previous Declaration, I participated in the negotiation of Santa Cruz's acquisition of the UNIX and UnixWare business from Novell, Inc. ("Novell") as support Santa Cruz's legal team. I worked with and participated in several meetings and teleconferences with the lead negotiators and others on both sides of the transaction.

5. In this Declaration I explain Novell's retained interest in royalties paid under certain existing agreements under the Asset Purchase Agreement ("APA") dated September 19, 1995, and Amendment No. 1 thereto dated December 6, 1995. The negotiations and drafting of the APA occurred under a compressed time schedule. To avoid delay, the parties executed the APA with the intent to clarify it, as necessary, through an amendment to be executed on the closing date. That amendment was Amendment No. 1 to the APA.

6. Santa Cruz's intent and agreement under the APA and Amendment No. 1 was for Novell to transfer the entire UNIX business, including the UNIX source code and copyrights, to

Santa Cruz except for binary royalties paid under the existing agreements pursuant to which UNIX System V (or "SVRX") licensees were paying such royalties, and which Novell conveyed to Santa Cruz under the APA as part of the UNIX business. Santa Cruz also intended and agreed that it would pay part of its revenues earned from the ongoing UnixWare business if Santa Cruz hit certain annual distribution or sales benchmarks through December 2002. Santa Cruz did not intend or agree to remit any other fees, royalties, or amounts under any other existing or prospective agreements.

7. This binary royalty interest that Novell retained was simply a means to lower the purchase price to SCO. My understanding was that Novell had no interest in continuing in the UNIX business at all, and if Santa Cruz could have paid the full purchase price originally proposed by Novell, Novell would not have retained the binary royalty stream or any rights to protect that royalty stream. That context makes it clear that it was the intent of the APA and Amendment No. 1 that Novell retained rights to protect that existing binary royalty stream, but there was no reason or interest for Novell to have broader rights relative the UNIX business and assets it sold Santa Cruz.

8. The language of the APA and Amendment No. 1 reflects the foregoing intent and agreement. Section 1.3(a)(i) of the APA states: "It is the intent of parties hereto that all of the Business and all of Seller's backlog, if any, relating to the Business be transferred to Buyer." Section 1.2(b) of the APA provides that Santa Cruz will pass through 100% of the "SVRX Royalties" as defined and described in Section 4.16(a), and Novell will pay Santa Cruz an administrative fee of 5%. Section 4.16(a), in turn, defines "SVRX Royalties" by reference to the SVRX Licenses listed in the Schedule to the APA listing the assets transferred, Schedule 1.1(a).

Indeed, Section 1.2(b) specifies: "Seller and Buyer further acknowledge and agree that Seller is retaining all rights to the SVRX Royalties notwithstanding the transfer of SVRX Licenses to Buyer pursuant hereto, and that Buyer only has a legal title and not an equitable title in such royalties within the meaning of Section 541(d) of the Bankruptcy Code." (Emphasis added.) These provisions reflect Santa Cruz's intent that it would remit only the Royalties paid under the licenses transferred, not Royalties from future licenses not yet in existence (and thus not transferred).

9. Section 4.16(a) includes this language: "Following the Closing, Buyer shall administer the collection of all royalties, fees and other amounts due under the SVRX Licenses (as listed in detail under Item VI of Schedule 1.1(a) hereof and referred to herein as 'SVRX Royalties')." Schedule 1.1(a) identifies the "SVRX Licenses" by product name and release, which reflected Santa Cruz's intent to refer to the specific product supplements that identified the licensed product and source code right-to-use fees, sublicensing fees, and per-copy distribution fees that applied to the licensed product, which fees were not identified in any other agreement signed by the licensee.

10. As to the reference in Section 4.16(a) to "all royalties, fees and other amounts due under the SVRX Licenses," the parties addressed that part of Section 4.16(a) in Amendment No. 1, which added Section 1.2(e) to the APA. Section 1.2(e) clarified the four categories of fees that Santa Cruz retained notwithstanding Novell's right to receive the binary royalties due under the transferred SVRX Licenses:

- Sections 1.2(e)(i) and 1.2(e)(iv). Santa Cruz would not remit future revenues from contracts to provide support or maintenance to existing SVRX licensees, nor the binary royalties due under Santa Cruz's own SVRX licenses.
- Section 1.2(e)(ii). Santa Cruz would not remit source code fees paid under any amendment to an SVRX License granting an additional copy of the SVRX product or the right to use it on an additional CPU.
- Section 1.2(e)(iii). Santa Cruz would not remit source code fees paid under new SVRX licenses approved by Novell pursuant to Section 4.16(b) of the APA.

Novell had the right to approve new SVRX licenses solely to protect Novell's interest in the existing SVRX binary royalty stream, such as where Santa Cruz might have sold an SVRX licensee a new version of the product (not a UnixWare license) and thereby extinguished the binary royalties due to Novell. If there were any ambiguity on that meaning of Section 1.2(e)(iii), Amendment No. 2 made clear, referring to the APA, that "Novell may not prevent SCO from exercising its rights with respect to SVRX source code in accordance with the Agreement."

11. Amendment No. 1 made clear that Santa Cruz was not prohibited from amending or entering into new SVRX licenses as an incidental part of licensing UnixWare. UnixWare products are built on the prior versions of the UNIX technology. Accordingly, when Novell and its predecessors licensed a UnixWare product, they also licensed all prior products as an incidental part the license. Amendment No. 1 reflected the parties' intent and understanding that Santa Cruz would continue to license the prior UnixWare and SVRX products with its UnixWare

licenses without additional approvals from Novell and without remitting any payments to Novell. This was simply consistent with the reality of licensing UnixWare.


12. The APA and Amendments thereto thus reflect Santa Cruz's intent in entering into the APA: Santa Cruz was obligated to remit to Novell only the binary royalties that were then being paid and that would continue to be paid under the existing agreements pursuant to which UNIX System V licensees were paying such royalties, and which Novell conveyed to Santa Cruz under the APA as part of the UNIX business.

13. Novell's rights under the APA and Amendment No. 1 either to approve SVRX licenses or to require SCO to waive or take other actions relative to those licenses related solely to the existing licensees who were paying binary royalties that Santa Cruz would pass through to Novell. Novell had no right to direct SCO to do anything regarding licenses or the UNIX business Novell sold to SCO except to protect the licensing stream that was in place in September 1995.

14. I understand that Novell also takes the position that the interests it was granted in the APA and amendments thereto to protect the royalty stream it retained gave Novell protection from competition with respect to competitors such as Sun and Microsoft. The APA and its amendments were never intended to afford Novell any such prospective protections. There was never any discussion or agreement of any kind regarding any such competitive protections. In fact, the only non-compete provision in the APA imposed restrictions on Novell to the benefit of Santa Cruz.

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

Executed: December 11, 2006



Kimberlee Madsen