

EXHIBIT 5

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

:

REPORTED BY

LAWRENCE PAUL NELSON, CSR 12144

JOB NO 191725

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Page 30			Page 32		
1	Q. Including UNIX copyrights; correct?	10:33:13	1	Operation at the time of the Novell-Santa Cruz deal	10:36:42
2	A. Including the UNIX copyrights.	10:33:16	2	had been sold off to other entities?	10:36:45
3	Q. And that particular paragraph Santa Cruz	10:33:18	3	MR. NORMAND: Objection to form.	10:36:49
4	did not claim to own UNIX copyrights; correct?	10:33:22	4	THE WITNESS: I don't know the particulars	10:36:53
5	MR. NORMAND: Objection to form, asked and	10:33:26	5	of the transaction with Sun, so I can't answer that	10:36:54
6	answered.	10:33:29	6	question.	10:36:59
7	THE WITNESS: Yes.	10:33:29	7	BY MR. BRAKEBILL:	10:37:04
8	BY MR. BRAKEBILL:	10:33:37	8	Q. As you sit here today do you have any	10:37:05
9	Q. Yes, they did not claim to own the UNIX	10:33:37	9	understanding as to whether or not any Tarantella	10:37:06
10	copyrights?	10:33:40	10	business was not purchased by Sun Microsystems in	10:37:08
11	A. That's correct.	10:33:41	11	2005?	10:37:13
12	Q. Do you know when this Santa Cruz-Caldera	10:33:43	12	A. No, I have no understanding of that.	10:37:13
13	deal closed?	10:33:49	13	Q. Did Mr. Sabbath stay at Tarantella after	10:37:17
14	MR. NORMAND: Objection to form.	10:33:56	14	the Santa Cruz-Caldera transaction?	10:37:22
15	BY MR. BRAKEBILL:	10:33:57	15	A. Yes.	10:37:24
16	Q. Approximately.	10:33:58	16	Q. Do you know how long he stayed at	10:37:24
17	A. I do not recall when it closed, sometime	10:34:07	17	Tarantella?	10:37:27
18	late in 2003, I believe.	10:34:17	18	A. He stayed until December of 2003, I	10:37:37
19	Q. I'll represent for the record, and Ted,	10:34:18	19	believe.	10:37:37
20	correct me if need be, but I'll represent for the	10:34:21	20	Q. Do you know what he did upon his departure	10:37:42
21	record that it closed in 2001.	10:34:24	21	from Tarantella?	10:37:44
22	A. I'm sorry. What did I just say?	10:34:27	22	A. I believe he's happily retired.	10:37:48
23	Q. 2003.	10:34:28	23	Q. Now, you were involved in 2001 in	10:37:55
24	A. Oh, I'm sorry.	10:34:30	24	corresponding with IBM concerning the Caldera	10:38:41
25	Q. Just in case it impacts the time frame for	10:34:31	25	acquisition of Santa Cruz assets; is that right?	10:38:47
Page 31			Page 33		
1	questions.	10:34:34	1	MR. NORMAND: Objection to form,	10:38:51
2	A. Yes, yes.	10:34:34	2	foundation.	10:38:52
3	Q. Does that sound correct to you that the	10:34:35	3	THE WITNESS: I don't know.	10:38:58
4	transaction closed in approximately 2001?	10:34:37	4	BY MR. BRAKEBILL:	10:39:09
5	A. Yeah, February or March, I believe, now	10:34:42	5	Q. As you sit here today you don't recall one	10:39:09
6	that I think about it.	10:34:46	6	way or another whether you were involved in	10:39:10
7	Q. Did you stay with Santa Cruz after the	10:34:54	7	correspondence with IBM in 2001 concerning Caldera's	10:39:13
8	Santa Cruz-Caldera transaction closed?	10:34:59	8	acquisition of Santa Cruz assets?	10:39:20
9	A. Yes.	10:35:01	9	A. I believe that I sent a letter to them. I	10:39:23
10	Q. And on or around the closing of the Santa	10:35:09	10	may have had phone conversations. I don't remember	10:39:28
11	Cruz-Caldera transaction in 2001 did the remaining	10:35:15	11	the particulars.	10:39:32
12	business become Tarantella?	10:35:20	12	MR. BRAKEBILL: Are you going to want to	10:40:48
13	A. Yes.	10:35:26	13	take a break soon? I can keep going. This is a	10:40:50
14	Q. And so you stayed in Tarantella's legal	10:35:27	14	convenient spot. Do you want to keep going?	10:40:53
15	department beginning in March or so of 2001?	10:35:34	15	THE WITNESS: Yeah, I can go a little	10:40:56
16	A. Yes.	10:35:36	16	longer.	10:40:58
17	Q. And then you stayed in Tarantella's legal	10:35:38	17	MR. BRAKEBILL: All right.	10:40:59
18	department until approximately August of 2004?	10:35:42	18	BY MR. BRAKEBILL:	10:41:02
19	A. Yes.	10:35:46	19	Q. Did you have a role in the negotiation of	10:41:17
20	Q. Are you aware that in 2005 Tarantella was	10:35:56	20	the asset purchase agreement between Novell and	10:41:22
21	purchased by Sun Microsystems?	10:36:01	21	Santa Cruz in 1995?	10:41:25
22	A. Yes.	10:36:03	22	A. Yes.	10:41:27
23	Q. So is it fair to say that at the time of	10:36:04	23	Q. Well, how would you characterize that role	10:41:28
24	the Sun purchase of Tarantella in 2005 that all of	10:36:31	24	as you sit here today?	10:41:34
25	the assets comprising the original Santa Cruz	10:36:38	25	A. I participated in meetings, negotiations,	10:41:36

9 (Pages 30 to 33)

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Page 34			Page 36		
1	a review of the asset purchase agreement, and	10:41:43	1	prior to the execution of the asset purchase	10:45:16
2	possibly preparation of some of the schedules.	10:41:50	2	agreement?	10:45:18
3	Q. Who was part of the legal team, in-house	10:42:07	3	A. I can't be certain of who -- there are	10:45:27
4	legal team at Santa Cruz participating in the	10:42:10	4	names that are familiar to me but I can't be certain	10:45:32
5	negotiation of the APA?	10:42:15	5	who came to Santa Cruz and who didn't. Ed is the	10:45:35
6	A. Primarily Steve Sabbath and myself.	10:42:17	6	person who sticks out most clearly in my mind.	10:45:38
7	Q. I take it Steve Sabbath was the lead	10:42:22	7	Q. You reference, if you will, two sets of	10:45:42
8	in-house lawyer for Santa Cruz on the APA	10:42:26	8	meetings, some meetings in Santa Cruz that you had	10:45:46
9	transaction?	10:42:29	9	with Novell and some meetings that you had with	10:45:48
10	A. Yes, I believe he was the only lawyer at	10:42:31	10	Novell in New Jersey. Is that fair?	10:45:51
11	the Santa Cruz Operation at that time.	10:42:34	11	A. Yes.	10:45:53
12	Q. Now, you mentioned that you believe you	10:42:47	12	Q. Did you have any meetings with Novell	10:45:54
13	were part of meetings concerning the asset purchase	10:42:50	13	aside from those in Santa Cruz and those in New	10:45:56
14	agreement. What meetings in particular do you have	10:42:54	14	Jersey?	10:45:59
15	in mind?	10:42:57	15	A. Yes. While we were getting the asset	10:45:59
16	A. We had internal meetings with Geoff	10:42:59	16	purchase agreement we had several meetings at -- I	10:46:03
17	Seabrook and Jim Wilt, who were the lead business	10:43:07	17	believe most of the meetings were at the Brobeck law	10:46:11
18	negotiators as well as meetings with Doug Michaels	10:43:13	18	firm and they might have been at Wilson Sonsini's	10:46:15
19	and Aluc Mohan, as well as meetings with Novell. Ed	10:43:20	19	facilities, but we had several meetings at the	10:46:21
20	Chatlos I remember in particular meetings with Ed.	10:43:27	20	lawyers who were representing the two parties.	10:46:25
21	Q. As you sit here today what specific	10:43:31	21	Q. Let's talk about the Santa Cruz meetings	10:46:29
22	meetings do you recall having with Novell prior to	10:43:34	22	with Novell first. Is it fair to say you don't	10:46:33
23	the execution of the asset purchase agreement on	10:43:36	23	recall anyone in particular from Novell that was	10:46:36
24	September 19th, 1995?	10:43:40	24	part of those meetings aside from Ed Chatlos?	10:46:38
25	MR. NORMAND: Objection to form, calls for	10:43:43	25	A. I don't remember anything in particular.	10:46:42
Page 35			Page 37		
1	a narrative.	10:43:48	1	I remember there were other people from Novell but I	10:46:45
2	THE WITNESS: I'm sorry. Can you repeat	10:43:48	2	couldn't say with certainty as to who they were.	10:46:49
3	the question?	10:43:49	3	Q. Do you recall when these meeting took	10:46:52
4	BY MR. BRAKEBILL:	10:43:50	4	place in Santa Cruz?	10:46:54
5	Q. You said you recall having meetings with	10:43:50	5	A. No, I can't recall the dates.	10:47:00
6	Novell prior to the execution of the asset purchase	10:43:52	6	Q. Do you recall that those meetings were	10:47:04
7	agreement?	10:43:56	7	prior to the execution of the original asset	10:47:07
8	A. Yes.	10:43:57	8	purchase agreement?	10:47:10
9	MR. NORMAND: Are you transcribing these	10:43:58	9	A. Yes.	10:47:11
10	objections or do I need to speak louder?	10:43:58	10	Q. You also mentioned some meetings in New	10:47:13
11	THE COURT REPORTER: No, I'm getting it.	10:43:58	11	Jersey with Novell? I believe you said you and	10:47:17
12	MR. NORMAND: Okay.	10:44:11	12	Steve Sabbath went to New Jersey?	10:47:20
13	BY MR. BRAKEBILL:	10:44:11	13	A. Yes.	10:47:22
14	Q. When's the first meeting that you recall	10:44:12	14	Q. How many meetings do you recall having	10:47:22
15	having with Novell prior to the execution of the	10:44:14	15	with people from Novell in New Jersey prior to the	10:47:25
16	asset purchase agreement?	10:44:17	16	execution of the asset purchase agreement?	10:47:28
17	A. I don't remember the dates. I remember Ed	10:44:22	17	A. There were numerous meetings over a couple	10:47:35
18	Chatlos, and there may have been other employees	10:44:30	18	days, a few days.	10:47:42
19	from Novell that accompanied him coming to Santa	10:44:33	19	Q. Who do you recall meeting with from	10:47:44
20	Cruz and having meetings in Santa Cruz as well as	10:44:38	20	Novell?	10:47:46
21	Steve and myself going to New Jersey on a couple of	10:44:42	21	A. I primarily remember meeting with Ed	10:47:48
22	occasions and meeting to discuss the transaction,	10:44:48	22	Chatlos. Burt Levine may have been involved in	10:47:59
23	the contemplated transaction.	10:44:52	23	meetings. Ty Mattingly may have been involved in	10:48:03
24	Q. Aside from Ed Chatlos, who from Novell do	10:45:02	24	meetings. I remember speaking with him on the phone	10:48:10
25	you recall meeting with from Novell in Santa Cruz	10:45:07	25	but I can't be certain whether or not he was	10:48:13

10 (Pages 34 to 37)

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Page 70			Page 72		
1	Q. Why don't you turn to Exhibit 51, which is	11:56:28	1	point to in the absence of reading the agreement	11:59:49
2	your declaration, and I'll ask you to look at	11:56:31	2	afresh, yes.	11:59:53
3	whatever you feel comfortable to look at, but I	11:56:47	3	BY MR. BRAKEBILL:	11:59:56
4	believe that paragraphs 8 -- 8 through 12 relate to	11:56:50	4	Q. And how, if at all, do you believe that	12:00:07
5	your beliefs concerning UNIX ownership.	11:57:03	5	recital A and section 1.1(a) of the asset purchase	12:00:09
6	A. Yes.	11:57:08	6	agreement --	12:00:14
7	MR. NORMAND: Objection to form.	11:57:09	7	A. And schedule 1.1(a), which is referenced	12:00:15
8	BY MR. BRAKEBILL:	11:57:16	8	in section 1.1(a).	12:00:20
9	Q. Is it a fair statement that -- well, let	11:57:17	9	Q. How do you believe that recital A, section	12:00:23
10	me ask it this way. What, if any, other provisions	11:57:21	10	1.1(a), and schedule 1.1(a) influenced your personal	12:00:27
11	in the asset purchase agreement did you rely upon in	11:57:25	11	belief that UNIX copyrights did transfer from Novell	12:00:34
12	your belief in this declaration that UNIX copyrights	11:57:27	12	to Santa Cruz?	12:00:44
13	did transfer from Novell to Santa Cruz?	11:57:30	13	A. Because all right, title, and interest --	12:00:44
14	A. I don't know. I don't remember which	11:57:39	14	let me get the language here, in and to the assets	12:00:48
15	specific provisions. And I'd be happy to take the	11:57:41	15	relating to the business, which is UNIX and	12:00:52
16	time to review this document if you want me to do	11:57:46	16	UnixWare, were being conveyed to SCO. And included	12:00:58
17	that.	11:57:50	17	in that would have, of course, been the copyrights.	12:01:03
18	Q. I'll give you the opportunity in due	11:57:53	18	Q. And did you understand that in section	12:01:07
19	course. I'm trying to test your memory aside from	11:57:56	19	1.1(a) of the asset purchase agreement that -- I'll	12:01:10
20	having the document in front of you right now. You	11:57:59	20	refer you to the last sentence, that notwithstanding	12:01:16
21	gave the declaration on UNIX ownership two months	11:58:02	21	schedule 1.1(a) the assets to be so purchased shall	12:01:21
22	ago; is that right?	11:58:06	22	not include the assets set forth on the schedule	12:01:24
23	MR. NORMAND: Asked and answered.	11:58:08	23	1.1(b)?	12:01:28
24	THE WITNESS: November 4th.	11:58:10	24	MR. NORMAND: Objection to form.	12:01:29
25	BY MR. BRAKEBILL:	11:58:11	25	THE WITNESS: Yes.	12:01:30
Page 71			Page 73		
1	Q. In the last two to three months you gave a	11:58:11	1	BY MR. BRAKEBILL:	12:01:31
2	declaration in which it was your personal belief	11:58:14	2	Q. And notwithstanding the excluded assets	12:01:32
3	that UNIX copyrights did transfer from Novell to	11:58:17	3	provision from section 1.1(a), is it still your	12:01:36
4	Santa Cruz as part of is the asset purchase	11:58:21	4	personal belief that the UNIX copyrights did	12:01:40
5	agreement; correct?	11:58:23	5	transfer?	12:01:42
6	A. Correct.	11:58:24	6	A. Yes.	12:01:43
7	Q. And what provisions, if any, were you	11:58:24	7	Q. From Novell to Santa Cruz?	12:01:44
8	relying upon for your personal belief that the UNIX	11:58:28	8	A. Yes.	12:01:46
9	copyrights did transfer?	11:58:31	9	Q. And why is that?	12:01:46
10	A. Well, I relied on the description of the	11:58:33	10	MR. NORMAND: Objection to form, asked and	12:01:55
11	business in 1.1(a) and the recital A. I don't	11:58:39	11	answered.	12:01:58
12	recall which other provisions I may have relied on,	11:58:48	12	THE WITNESS: Because it's clear --	12:01:58
13	but I also relied on my recollection of the	11:58:54	13	BY MR. BRAKEBILL:	12:01:58
14	transaction and the negotiations surrounding the	11:58:59	14	Q. Let me put it this way. Aside from	12:02:02
15	transaction, the conversations with Novell as to	11:59:03	15	recital A --	12:02:06
16	what they were conveying and the internal	11:59:06	16	A. Yes.	12:02:06
17	conversations as to what we believed we were buying.	11:59:09	17	Q. -- aside from section 1.1(a) in schedule	12:02:07
18	Q. So to make sure that I understand your	11:59:16	18	1.1(a), is there any other reason for why you	12:02:11
19	testimony, the provisions that you right now can	11:59:19	19	believe that the assets to be so purchased shall not	12:02:14
20	point to in support of your belief that UNIX	11:59:26	20	include the assets set forth in schedule 1.1(b)?	12:02:16
21	copyrights did transfer from Novell to Santa Cruz	11:59:30	21	A. I didn't understand the question.	12:02:23
22	are recital A in section 1.1(a) of the asset	11:59:33	22	Q. Aside from recital A, aside from section	12:02:24
23	purchase agreement; is that correct?	11:59:39	23	1.1(a), and aside from schedule 1.1(a), is there any	12:02:28
24	MR. NORMAND: Objection to form.	11:59:42	24	other basis for your opinion that schedule 1.1(b)	12:02:36
25	THE WITNESS: The provisions that I can	11:59:46	25	does not operate -- that schedule 1.1(b) does not	12:02:42

19 (Pages 70 to 73)

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Page 74		Page 76	
1	excluded UNIX copyrights from the assets to be sold? 12:02:47	1	the patents to begin with, but I remember them 12:06:25
2	MR. NORMAND: Objection to form, asked and 12:02:51	2	taking the pains that they wouldn't be transferring 12:06:27
3	answered. 12:02:55	3	patents. And some of the patents had been retained 12:06:30
4	THE WITNESS: Yes. As I said before, I 12:02:55	4	by AT&T, the original owner of the UNIX technology, 12:06:32
5	also recall the conversations and discussions with 12:02:59	5	so they weren't Novell's to transfer. 12:06:38
6	Novell as to what the intent of the transaction was, 12:03:03	6	BY MR. BRAKEBILL: 12:06:42
7	what they intended to convey, what SCO intended to 12:03:13	7	Q. Do you believe that Novell had no rights 12:06:42
8	purchase. 12:03:18	8	in UNIX patents at the time it was entered into the 12:06:44
9	BY MR. BRAKEBILL: 12:03:20	9	Novell-Santa Cruz transaction? 12:06:48
10	Q. And what did Novell convey to you 12:03:21	10	MR. NORMAND: Objection to form. 12:06:49
11	regarding what was going to be conveyed to Santa 12:03:24	11	THE WITNESS: I don't know. I know that 12:06:50
12	Cruz with regard specifically to UNIX copyrights? 12:03:28	12	some were retained by AT&T but I don't know that 12:06:52
13	MR. NORMAND: Objection to form. 12:03:32	13	some may have been transferred to Novell. I don't 12:06:55
14	THE WITNESS: I do not recall a specific 12:03:36	14	recall that. 12:06:58
15	conversation regarding copyrights, but Novell 12:03:39	15	BY MR. BRAKEBILL: 12:06:58
16	conveyed that they were clearly divesting themselves 12:03:47	16	Q. But it is your understanding that no UNIX 12:06:59
17	of the UNIX business. They had no interest in the 12:03:52	17	patents were being transferred from Novell to Santa 12:07:01
18	UNIX business in retaining any interest in the UNIX 12:03:59	18	Cruz? 12:07:06
19	business except to the extent that it related to 12:04:02	19	MR. NORMAND: Objection to form, 12:07:06
20	Network. 12:04:02	20	mischaracterizes her testimony. 12:07:09
21	And they were very clear about what they 12:04:08	21	THE WITNESS: I'm not sure what you mean by 12:07:09
22	were not conveying, which were the patents. And 12:04:16	22	patents. No patents relating to specific areas of 12:07:11
23	they were clear about a transaction that they had 12:04:26	23	the UNIX technology. There is no, to my knowledge 12:07:16
24	entered into with X/Open regarding the trademark so 12:04:29	24	no broad patent over all of UNIX. It wouldn't be 12:07:19
25	at no point did they say, "Oh, by the way, we're not 12:04:34	25	patentable, I don't believe, but there were no 12:07:23
Page 75		Page 77	
1	giving you the copyrights." 12:04:39	1	patents relating to the UNIX assets being 12:07:27
2	Q. At any point in time did Novell, anyone 12:04:40	2	transferred, being conveyed to SCO. 12:07:32
3	from Novell, say to you, "We're going to transfer 12:04:43	3	BY MR. BRAKEBILL: 12:07:37
4	the UNIX copyrights to Santa Cruz?" 12:04:47	4	Q. If someone were to make a statement that 12:07:37
5	A. No I don't recall that. It was assumed by 12:04:52	5	Novell transferred all UNIX intellectual property to 12:07:40
6	everyone that, of course, the copyrights were 12:04:55	6	Santa Cruz, is it your understanding that that 12:07:43
7	accompanying. 12:04:59	7	statement would be incorrect? 12:07:45
8	Q. There were no express words from anyone 12:05:00	8	A. I'm sorry? 12:07:47
9	from Novell to you saying Novell is going to 12:05:03	9	Q. If someone were to make the statement that 12:07:48
10	transfer the UNIX copyrights to Santa Cruz; correct? 12:05:08	10	Novell transferred all UNIX intellectual property to 12:07:52
11	MR. NORMAND: Objection, asked and 12:05:13	11	Santa Cruz, would that be an incorrect statement? 12:07:57
12	answered. 12:05:14	12	MR. NORMAND: Objection to form, calls for 12:08:02
13	THE WITNESS: That's correct. 12:05:14	13	speculation. 12:08:13
14	BY MR. BRAKEBILL: 12:05:16	14	THE WITNESS: I don't understand the 12:08:13
15	Q. Now, you mentioned patents. If you could 12:05:17	15	question. 12:08:14
16	turn to schedule 1.1(b) of Exhibit 1 and look at 12:05:22	16	BY MR. BRAKEBILL: 12:08:16
17	Roman V on Exhibit 2. Roman V(b) says "all 12:05:47	17	Q. If someone were to say that Novell 12:08:16
18	patents." Do you see that? Is it your 12:05:51	18	transferred all intellectual property relating to 12:08:21
19	understanding that that relates to all UNIX patents? 12:05:53	19	UNIX to Santa Cruz, do you have a view as to whether 12:08:25
20	MR. NORMAND: Objection to form. 12:05:57	20	or not that statement would be correct? 12:08:29
21	THE WITNESS: I don't remember which 12:06:00	21	MR. NORMAND: Objection to form, calls for 12:08:31
22	patents there were. I remember a conversation with 12:06:02	22	speculation. 12:08:51
23	Ed Chatlos and I believe Burt Levine that they would 12:06:07	23	THE WITNESS: I don't think I can answer 12:08:51
24	not be transferring any patents. And there was an 12:06:11	24	that question. I don't know which patents there may 12:08:52
25	issue because, you know -- SCO wasn't interested in 12:06:20	25	have been. So if you're including that in your 12:09:02

20 (Pages 74 to 77)

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1 definition of intellectual property, then that would 12:09:05
 2 have been excluded. But I believe Novell also, we 12:09:08
 3 licensed back to them certain rights. 12:09:13
 4 So I don't know if that fits into your 12:09:17
 5 definition of conveyance of intellectual property. 12:09:19
 6 So I'm sorry. I can't answer that. 12:09:22
 7 BY MR. BRAKEBILL: 12:09:28
 8 Q. Is it your understanding that the business 12:09:28
 9 that was being sold was a UNIX business? 12:09:30
 10 A. Yes. 12:09:32
 11 Q. And could you turn to attachment D of 12:09:33
 12 Exhibit 1? It ends in the number on the right-hand 12:09:44
 13 corner 977. 12:09:50
 14 A. Uh-huh. 12:10:06
 15 Q. Do you see that this is a document 12:10:07
 16 entitled "Seller's Patents and Patent Applications 12:10:10
 17 Affecting the Business"? 12:10:13
 18 A. Uh-huh. 12:10:14
 19 Q. Do you have any understanding as to 12:10:14
 20 whether these are patents or patent applications 12:10:16
 21 affecting the UNIX business that was being sold to 12:10:19
 22 Santa Cruz? 12:10:23
 23 MR. NORMAND: Objection to form. 12:10:27
 24 THE WITNESS: Yes, I believe they were. I 12:10:32
 25 don't have any specific recollection about the 12:10:36

1 individual patents, though. 12:10:39
 2 BY MR. BRAKEBILL: 12:10:42
 3 Q. I take it you would agree that none of 12:10:42
 4 these patents were transferred to Santa Cruz as part 12:10:44
 5 of the deal? 12:10:48
 6 MR. NORMAND: Objection to form. 12:10:49
 7 THE WITNESS: I believe that's correct. 12:10:53
 8 BY MR. BRAKEBILL: 12:11:25
 9 Q. Now, in your declaration which is on 12:11:27
 10 Exhibit 51 -- 12:11:29
 11 A. Uh-huh. 12:11:30
 12 Q. -- in paragraph 8 you say, "It was never 12:11:34
 13 agreed or even discussed that Novell would be 12:11:39
 14 retaining any copyrights to UNIX." Do you see that? 12:11:42
 15 A. Yes. 12:11:45
 16 Q. Again, you didn't have any discussions 12:11:46
 17 with anyone at Novell where they told you that UNIX 12:11:48
 18 copyrights were being transferred; correct? 12:11:51
 19 MR. NORMAND: Objection to form and asked 12:11:54
 20 and answered. 12:11:58
 21 THE WITNESS: I don't recall any 12:11:58
 22 conversations with Novell pertaining to copyrights. 12:12:00
 23 BY MR. BRAKEBILL: 12:12:17
 24 Q. Were you part of any conversation between 12:12:17
 25 Santa Cruz representatives and Novell 12:12:23

1 representatives where Santa Cruz put the question to 12:12:25
 2 Novell, "Can you transfer the UNIX copyrights to 12:12:28
 3 us?" 12:12:33
 4 MR. NORMAND: Objection to form. 12:12:35
 5 THE WITNESS: No, I don't recall that. 12:12:42
 6 BY MR. BRAKEBILL: 12:12:45
 7 Q. Are you aware of any conversations that 12:13:18
 8 may have taken place between Santa Cruz 12:13:23
 9 representatives and Novell representatives where 12:13:25
 10 anyone from Santa Cruz asked Novell to give them the 12:13:29
 11 UNIX copyrights as part of this deal? 12:13:37
 12 MR. NORMAND: Objection to form. 12:13:42
 13 THE WITNESS: No, I do not recall any 12:13:44
 14 conversation regarding the copyrights. It was 12:13:47
 15 assumed that the copyrights came with the business, 12:13:51
 16 but I do not have any specific recollection about a 12:13:57
 17 conversation regarding copyrights. 12:14:01
 18 BY MR. BRAKEBILL: 12:14:03
 19 Q. So it's fair to say that you were assuming 12:14:03
 20 that the UNIX copyrights were being transferred? 12:14:05
 21 MR. NORMAND: Objection to form. 12:14:08
 22 THE WITNESS: I don't believe that was my 12:14:09
 23 assumption alone, but yes, I was assuming that. 12:14:11
 24 BY MR. BRAKEBILL: 12:14:15
 25 Q. And I take it it's your view that other 12:14:22

1 members of the Santa Cruz negotiating team were 12:14:26
 2 assuming that the UNIX copyrights were being 12:14:28
 3 transferred to Santa Cruz; is that correct? 12:14:31
 4 MR. NORMAND: Objection to form, calls for 12:14:34
 5 speculation. 12:14:37
 6 THE WITNESS: I believe it was the 12:14:37
 7 understanding of SCO and Novell that the copyrights 12:14:38
 8 would follow with the business. 12:14:41
 9 BY MR. BRAKEBILL: 12:14:41
 10 Q. I'm just asking about Santa Cruz right 12:14:44
 11 now, okay? Is it fair to say that it's your view 12:14:46
 12 that other members of the Santa Cruz negotiation 12:14:53
 13 team were assuming that the UNIX copyrights were 12:14:56
 14 being transferred to Santa Cruz? 12:15:00
 15 A. Yes, that's my understanding. 12:15:02
 16 Q. Now, are you aware that Santa Cruz 12:15:20
 17 before -- -- strike that. 12:15:24
 18 At the time of the asset purchase agreement 12:15:25
 19 Santa Cruz had an SVRX license with Novell? 12:15:30
 20 MR. NORMAND: Objection to form. 12:15:36
 21 THE WITNESS: No. 12:15:43
 22 BY MR. BRAKEBILL: 12:15:44
 23 Q. So is it your understanding that prior to 12:15:48
 24 the execution of the asset purchase agreement, Santa 12:15:52
 25 Cruz had no rights relating to UNIX System V? 12:15:56