

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION
U.S. DISTRICT COURT

2010 DEC -6 P 3:40

DISTRICT OF UTAH

~~TAXATION OF COSTS~~
DEPUTY CLERK

The SCO Group, Inc,

Plaintiff,

vs.

Novell, Inc,

Defendant.

Case No. 2:04 cv 139 TS

Judgment in the above-entitled matter was entered on June 10, 2010. A bill of costs and supporting documentation was filed on June 24, 2010. Plaintiff filed a notice of appeal on July 7, 2010 and a motion to stay the taxation of costs. Defendant objected to the stay of taxation of costs on July 26, 2010. The court denied the stay on August 17, 2010 and the plaintiff filed its objections to the cost bill on August 26, 2010. The defendant replied to the objections on September 7, 2010.

The objections identify specific items included in the cost bill which it asserts are not appropriate for taxation under 28 U.S.C. § 1920. In response to the objections of the plaintiff, the defendant withdrew two contested items, \$21,936 for mock trial graphics and \$2,914.74 for folder and binder costs. There remain two areas of contested costs.

The first area are amounts requested for preparation and presentation of trial material including trial presenter fees for a technology consulting services, graphics consultation and the slide presentation. The defendant objects to the taxation of these costs because they either are inappropriate for taxation as professional services or, if considered part of the costs of

exemplification for trial, should be disallowed for failure to meet the test of necessity for use in the case. The plaintiff responded by noting the highly technical nature of the claims of this cases. Both parties availed themselves of the court's technological resources and both parties employed a trial technician. The court itself noted that the trial proceeded smoothly because of the high quality of the technological resources. The court has discretion to allow such professional fees but the discretion lies with the judge, not with the clerk who taxes costs as a ministerial duty. Trial presenter costs, like attorney fees, are not within the scope of the clerk's authority to tax costs which is limited to the items in 28 U.S.C. § 1920. The clerk disallows the \$72,832.50 which are designated as trial presenter fees.

The clerk notes the special nature of this litigation and the need for extensive exemplification of data for use of the jury during trial. The fact that each party used similar resources at trial supports the defendant's position that the costs of preparing graphic exhibits meet the test of being necessary for use in the case. The plaintiff cites cases which state that courts regularly impose a requirement for prior authorization of costs which generate great expense and states that the costs should be disallowed on this basis. The clerk notes that prior authorization has not been required in this district and that the parity of the sophistication of the trial exhibits for both parties suggest that these extensive, costly exhibits were reasonable in light of the nature of this case. The clerk will allow the taxation of the requested \$32,725.75 for the graphics costs as exemplification costs at trial.

The plaintiff further objects to the taxation of the copy costs requested by the defendant on the basis that there were insufficient support to establish that the copies were necessarily obtained for use in the case. The specific objection is that there was no showing of the nature of the documents copied and how these documents necessary for use in the case. The plaintiff further objects to the costs as patently unreasonable as to the number of pages copied and the

time period in which the copying occurred.

The defendant notes that the requirement to support copying costs does not require excessive documentation of every single copy made but that more general support was sufficient to show that the material copied was for documents necessarily obtained for use in the case as required by 28 U.S.C. § 1920.

The clerk notes that the costs of obtaining documents from third parties are clearly taxable under 28 U.S.C. § 1920, but the internal copying costs of law firms are more questionable. Many internal copies are made for the convenience of counsel and should be considered part of office overhead which is included in the hourly fees for attorney services charged by members of a law firm. Copies of cases and convenience copies of pleadings are generally not taxable by the clerk. The plaintiff identifies \$62,382.28 in copy costs which it feels have not been established as reasonable and necessarily obtained for use in the case. The clerk is also unable to decipher what material is represented by the internal billing sheets attached as support to the bill of costs. Clearly, in this complex litigation, there are recoverable copy costs. The clerk will reduce the copy costs by \$30,000.00 for lack of supporting documentation but will allow the remaining \$32,383.28 of costs requested.

Total costs allowed are \$187,817.95 and are included in the judgment. The parties are further notified that the clerk's taxation may be reviewed by the court upon motion filed within seven days.

DATED this 07th day of December, 2010.

D. MARK JONES, CLERK

By: 

Louise S. York, Chief Deputy