

In The Matter Of:

*THE SCO GROUP, INC., v.
INTERNATIONAL BUSINESS MACHINES CORPORATION*

DAVID FRASURE

June 8, 2004

LEGALINK MANHATTAN

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FRASURE, DAVID



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THE SCO GROUP, INC.,
Plaintiff/Counterclaim-Defendant

-against-

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Defendant/Counterclaim-Plaintiff.

8:52 AM

Video deposition of David Frasure
(Taken by the Defendant)

June 8, 2004

9a.m.

At the Comfort Inn
451 US Highway 264 W
Wilson, North Carolina

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1 Examination by Mr. Kao..... 5:8
2 Examination by Mr. Gant..... 117:6
3 Further Examination by Mr. Kao..... 266:24
4 Further Examination by Mr. Gant..... 292:20
5 Examination by Mr. Szymanski..... 294:12

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7
8 EXHIBIT MARKED FOR IDENTIFICATION.

9 Frasure 1..... 9:22

10 EXHIBIT MARKED FOR IDENTIFICATION.

11 Frasure 2..... 93:25
12
13

14 Videotape #1..... 4:2

15 Videotape #2..... 96:12

16 Videotape #3..... 181:13

17 Videotape #4..... 247:15
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19
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23
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APPEARANCES:

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33 ALSO PRESENT: Bob Collier, Videographer
34
35

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1 THE VIDEOGRAPHER: Here begins 09:04 AM
2 Videotape #1 in the deposition of David Frasure in
3 the matter of the SCO Group, Inc., plaintiff,
4 counterclaim-defendant versus International Business
5 Machines Corporation, defendant, counterclaim- 09:04 AM
6 plaintiff in the United States District Court for the
7 District of Utah in case number 2:03CV-0294 DAK.

8 Today's date is June 8th, 2004. The
9 time on the video monitor is 9:05. The videotape
10 operator today is Bob Collier. 09:04 AM

11 This video deposition is taking place
12 at the Comfort Inn, 4941 US Highway 264 West, Wilson,
13 North Carolina.

14 Counsel please voice identify
15 yourselves and state whom you represent. 09:05 AM

16 MR. KAO: Kris Kao with Cravath, Swaine
17 & Moore, LLP, on behalf of defendant IBM.

18 MR. SZYMANSKI: James G. Szymanski of
19 Harkins-Cunningham, One Pennsylvania Plaza, 25th
20 Floor, New York, New York, on behalf of the witness. 09:05 AM

21 MR. GANT: Scott Gant from Boies,
22 Schiller and Flexner for the Sco group.

23 MR. NOTO: Aldo Noto from Andrews
24 Kurth, LLP, on behalf of Sco Group.

25 MR. DAVIS: Steve Davis from Boies, 09:05 AM

1 (Pages 1 to 4)

DAVID FRASURE

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1 Schiller and Flexner on behalf of the Sco Group. 09:05 AM
 2 THE VIDEOGRAPHER: The court reporter
 3 today is Kay Westbrook of Russell Court Reporting.
 4 Will the reporter please swear in the witness.
 5 David Frasure, 09:05 AM
 6 being first duly sworn to tell the truth was examined
 7 and testified as follows: (I do)
 8 EXAMINATION BY MR. KAO:
 9 Q. Morning, Mr. Frasure.
 10 A. Good morning. 09:05 AM
 11 Q. I'm just going to review some basic
 12 deposition things with you before we get started. If
 13 you don't understand any questions that I ask please
 14 just let me know and I'll try to rephrase them so you
 15 can understand them. 09:06 AM
 16 If you need to take a break at any time
 17 just let us know and we'll take a break, and during
 18 the course of the deposition either your counsel or
 19 counsel for the Sco Group might be making objections
 20 to the questions that I ask, please allow them a 09:06 AM
 21 moment to object before you begin your answer and
 22 then you can continue on with your answer.
 23 And also if you have any questions
 24 during the course of the deposition let me know.
 25 A. All right. 09:06 AM

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1 Q. First, can you state your full name and 09:06 AM
 2 address for the record?
 3 A. Yes. It's David William Frasure,
 4 f-r-a-s-u-r-e. I live at 2306, Unit A, Sutton Place,
 5 Wilson, North Carolina. 09:06 AM
 6 Q. And can you review your educational
 7 history with me after high school.
 8 A. I attended a school in Detroit, Detroit
 9 College for one semester, and then I went to Cahokia,
 10 Illinois. It was Parks College of Aeronautical 09:07 AM
 11 Technology of St. Louis University where I received a
 12 Bachelor of Science Degree in Aeronautical
 13 Engineering.
 14 Q. Did you do any studies after that?
 15 A. I did some masters degree courses, some 09:07 AM
 16 extra, you know, short courses that I would attend
 17 when I was with AT&T at Princeton University a number
 18 of times -- courses I attended there.
 19 Q. And can you briefly review your
 20 employment history with me after graduating from, 09:07 AM
 21 from college?
 22 A. See, I first went to work for Lockheed
 23 Aircraft in Marietta, Georgia. It was from January
 24 of 1966 through probably October of '67. I left
 25 there to go to Fairchild Hiller Aircraft in 09:08 AM

1 Hagerstown, Maryland, and I was there for a year from 09:08 AM
 2 October '67 to October of 1968; and then I was hired
 3 as a consultant to Western Electric Company in
 4 October of 1968 in Burlington, North Carolina, and I
 5 was a consultant with them for three-and-a-half years 09:08 AM
 6 on a missile program; and I believe in 1972 they made
 7 me an offer to become a direct employee, and I was
 8 employed with them up until 1987 in different
 9 capacities.
 10 I left Burlington to become part of the 09:08 AM
 11 AT&T Federal Systems at that time. In 1975 I
 12 transferred to Greensboro, North Carolina, and went
 13 through several promotions, changing -- AT&T had
 14 various entities I guess if you will within AT&T and
 15 kind of transferred around those. 09:09 AM
 16 My last assignment at AT&T was with
 17 Unix System Licensing Group. I left there in 1987
 18 and I began work for Kidde Aerospace in I believe it
 19 was January of 1988. I was with them until 1993 when
 20 I left to become a partner in a, in a private 09:09 AM
 21 business; and in 2000 of July of 2000 I came back to
 22 Kidde Aerospace and I have been with them ever since.
 23 Q. So you're currently employed by Kidde
 24 Aerospace?
 25 A. Yes, I am. 09:10 AM

Page 8

1 Q. Can you briefly describe for me your 09:10 AM
 2 responsibilities for the licensing of Unix Software
 3 while you were at AT&T?
 4 A. I was a manager of licensing, I had 11
 5 account executives that worked for me and they were 09:10 AM
 6 assigned to various companies. We licensed the Unix
 7 Source Code and we also provided sublicensing
 8 agreements, and that was for people who would take
 9 the source code and make binary or object code
 10 modules or operating systems that it would sell to 09:10 AM
 11 the, to the general public to run on personal
 12 computers or mainframes, large computers.
 13 I supervised those people and I was
 14 involved in all of negotiations with customers
 15 regarding their contracts, providing explanations. I 09:11 AM
 16 worked with the AT&T attorneys that were assigned to
 17 the Unix Licensing Group. We would work out side
 18 letters, letters of explanation, and once the
 19 agreement was agreed to, once it was signed or ready
 20 for signature, then it went to my boss, Otis Wilson, 09:11 AM
 21 and he typically signed all the agreements. I would
 22 sign for him in his absence.
 23 We had an escalation policy that
 24 typically we'd start with the account executive.
 25 They would try and answer all the questions with the 09:11 AM

customer and typically in 80 percent of the cases they did. If there was further questions and the customer wanted to talk to someone else, they came to me and then if I couldn't satisfy them then they would go to, go to Otis. But typically Otis just signed the agreements after they were negotiated.

Q. And how were the customers divided between the account executives?

A. Just really based on load balance of, you know, we would, the account executives were, would administer the agreements, they would negotiate them, but they were also actively pursuing other companies to which we could license the source code. So based on their own I guess, incentive, if you would, and drive, they would go out and try to secure other licensees to license the software. So it was really a load balance type thing. If someone had too many customers we would try to give them off to another account executive that maybe did not have as many.

(Off-the-record discussion.)

EXHIBIT MARKED FOR IDENTIFICATION.

Frasure 1.

MR. KAO: You've been handed,

Mr. Frasure, what's been marked as Exhibit 1 of your

deposition. I'll give you a moment to just review this document, and my first question to you after you've had a chance to review it is whether you recognize it or not?

A. Yes, I recognize it.

Q. Can you tell me what this is?

A. This is a, a statement that I have signed based on questions that were addressed to me in my explanation to, to an attorney David Marriott regarding issues around the System V Software Licensing Agreement; and he prepared this statement of which I read, and made some changes to over the telephone, and once I was satisfied with the content of it I signed it.

MR. GANT: Let me just put on the record that this is the first time that I'm aware of that this document has been provided to counsel for SCO. We have not had an opportunity to see it, and we object to not having been provided with it before today.

MR. KAO: Now, if you turn to page 12 of the exhibit, my only question there, is that your signature, Mr. Frasure?

A. Yes, it is.

Q. And do you believe everything that is

contained in this Declaration that you have signed to be true and accurate?

A. To the best of my knowledge it is, yes.

MR. GANT: Chris, I'm going to ask for just a temporary break so that we have an opportunity to review this document before you proceed with your questioning. I presume you'll agree to that.

MR. KAO: Sure. We can do that. I also intend to go paragraph by paragraph through the Declaration of Mr. Frasure, but that's fine.

MR. GANT: (Overlapping) we'd like to review it before you proceed.

MR. KAO: We can take a short break.

THE VIDEOGRAPHER: Going off the record, the time is 9:16. (A recess was taken.)

(REPORTER READ BACK.)

THE VIDEOGRAPHER: Back on the record, the time is 10:13.

MR. GANT: Before we resume I just like to renew SCO's objection to not having been provided with Mr. Frasure's affidavit before this morning, and we reserve all rights with regard to that conduct, including continuing the deposition beyond the date and otherwise raising the issue with

the court.

MR. KAO: That's fine.

Before the break, Mr. Frasure, we were looking at your Declaration which has been marked as Exhibit 1.

MR. GANT: Chris, can I just ask you to clarify or be more precise. There are, there is a cover document --

MR. KAO: Sure.

MR. GANT: -- to Exhibit 1 and then there appear to be ten attachments to it.

MR. KAO: Sure.

MR. GANT: -- so if you're referring to subparts of Exhibit 1, I think it would make the record clearer.

MR. KAO: Sure. Right now I'm referring to the entire Exhibit 1. Why don't we identify for the record if you look at the first 12 pages, Mr. Frasure, do you understand that to be the Declaration that you signed regarding the, the issues that you were asked to provide knowledge about?

A. Yes.

Q. And looking at the -- there are ten tabs to this document, do you recognize those to be documents that are referenced in your, in your

DAVID FRASURE

<p>Page 13</p> <p>1 Declaration? 10:14 AM</p> <p>2 A. Yes, I do.</p> <p>3 Q. And did you review all of these</p> <p>4 documents, Mr. Frasure, in signing your Declaration?</p> <p>5 A. Yes. 10:15 AM</p> <p>6 Q. Now, if you can turn to page one of the</p> <p>7 Declaration, I'm just going to walk through with</p> <p>8 you each of the statements that you make in this</p> <p>9 Declaration, and first I'll have you review...?</p> <p>10 MR. GANT: You mean page two? 10:15 AM</p> <p>11 MR. KAO: Page two, excuse me. First</p> <p>12 I'll have you look at paragraph 3, and I'll have you to</p> <p>13 review for yourself and my question is whether that</p> <p>14 is an accurate statement.</p> <p>15 MR. GANT: Objection, vague. 10:16 AM</p> <p>16 MR. SZYMANSKI: You may answer.</p> <p>17 MR. KAO: You can answer.</p> <p>18 A. Yes, that's correct.</p> <p>19 Q. And I'll have you review paragraph 4 to</p> <p>20 yourself. 10:16 AM</p> <p>21 A. Yes, that's correct.</p> <p>22 MR. GANT: Move to strike. There was</p> <p>23 no question pending.</p> <p>24 MR. KAO: Wait for my, wait for my</p> <p>25 question. Have you reviewed paragraph 4? 10:16 AM</p>	<p>Page 15</p> <p>1 Q. Now paragraph 6 refers to three 10:17 AM</p> <p>2 agreements, make that 4. The first is Software</p> <p>3 Agreement dated February 1, 1985, between AT&T</p> <p>4 Technologies and IBM; is that correct?</p> <p>5 A. That is correct. 10:18 AM</p> <p>6 Q. Can you look at the document behind</p> <p>7 Tab 1 of this Declaration?</p> <p>8 A. Okay.</p> <p>9 Q. Is that document behind Tab 1 the</p> <p>10 software agreement that is referred to in your 10:18 AM</p> <p>11 Declaration?</p> <p>12 A. Yes, it is.</p> <p>13 MR. GANT: Objection, vague.</p> <p>14 MR. KAO: And did you personally</p> <p>15 negotiate the software agreement that is behind Tab 1 10:18 AM</p> <p>16 of your Declaration?</p> <p>17 MR. GANT: Objection, vague.</p> <p>18 MR. KAO: You can answer.</p> <p>19 A. Yes.</p> <p>20 Q. And if you look at the bottom of the 10:18 AM</p> <p>21 first page of the document behind Exhibit #1; is that</p> <p>22 your signature?</p> <p>23 A. Yes, it is.</p> <p>24 Q. Now the second agreement that is</p> <p>25 referenced in paragraph 6 of your Declaration is the</p>
<p>Page 14</p> <p>1 A. Yes. 10:16 AM</p> <p>2 Q. And is paragraph 4 an accurate</p> <p>3 statement?</p> <p>4 MR. GANT: I'm going to object to this</p> <p>5 and I suspect object to these series of questions 10:16 AM</p> <p>6 insofar as the question is vague and compound. There</p> <p>7 are multiple statements obviously contained in each</p> <p>8 paragraph, that the question without more specificity</p> <p>9 is meaningless.</p> <p>10 MR. KAO: Fine. Let me rephrase. 10:16 AM</p> <p>11 Mr. Frasure, is each sentence in</p> <p>12 paragraph 4 of page two of your Declaration accurate?</p> <p>13 A. Yes, it is.</p> <p>14 Q. Can you please review paragraph 5 for</p> <p>15 me? 10:17 AM</p> <p>16 A. I've reviewed it.</p> <p>17 Q. Is each sentence of paragraph 5</p> <p>18 accurate?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Can you review paragraph 6 for me, 10:17 AM</p> <p>21 Mr. Frasure?</p> <p>22 A. I've reviewed it.</p> <p>23 Q. Is each sentence of paragraph 6</p> <p>24 accurate?</p> <p>25 A. Yes, it is. 10:17 AM</p>	<p>Page 16</p> <p>1 sublicensing agreement dated February 1, 1985. Do 10:18 AM</p> <p>2 you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Okay. If you turn with me to Tab 2 of</p> <p>5 your Declaration. Do you recognize the document 10:19 AM</p> <p>6 behind Tab 2 of your Declaration to be the</p> <p>7 sublicensing agreement referred to in paragraph 6 of</p> <p>8 your Declaration?</p> <p>9 A. Yes, I do.</p> <p>10 MR. GANT: Objection, vague. 10:19 AM</p> <p>11 MR. KAO: Did you personally negotiate</p> <p>12 this sublicense agreement that is behind Tab 2 of</p> <p>13 your Declaration?</p> <p>14 MR. GANT: Objection, vague.</p> <p>15 A. Yes, I did.</p> <p>16 MR. GANT: Mr. Frasure, if I could</p> <p>17 just ask give me a tad more of an opportunity to</p> <p>18 interpose my objection. Thank you.</p> <p>19 MR. KAO: If you look at the bottom of</p> <p>20 the first page of the document behind Tab 2, do you 10:19 AM</p> <p>21 recognize that to be your signature?</p> <p>22 MR. GANT: Objection, vague.</p> <p>23 A. Yes, I do.</p> <p>24 MR. KAO: The third agreement that is</p> <p>25 referred to in paragraph 6 of your Declaration is a 10:19 AM</p>

the licenses may have varied from one licensee to the next, and while some licensees do not have side letters, our intent was to hold all licensees to the same basic standard. Do you see that? 10:27 AM

A. Yes.

Q. Can you tell me what you mean by that?

MR. GANT: Objection, vague.

MR. KAO: You can answer.

A. What I meant here is that some side letters, if a side letter did exist to a software agreement it may have a clarification of one paragraph. Another side letter may have a clarification of two or three or four paragraphs. So the -- each one of those was different depending upon maybe what the customer asked for is for clarification purposes. So they, they were different. 10:28 AM

Q. What do you mean by the statement that it was AT&T's intent to hold all licensees to the same basic standard? 10:28 AM

A. If we provided clarification in a, in a side letter, that same language would be used if, if one customer asked for clarification of a paragraph we would provide that; and if another customer 10:28 AM

subsequent to that asked for clarification of the paragraph, we would attempt use exactly the same language that we had previously been given to another customer. 10:29 AM

Also, if no side letter existed that language that we had established would then be universally applied to all the System V Agreements negotiated to, to that point and in the, in the future. 10:29 AM

MR. GANT: Objection and move to strike. The answer is non-responsive. 10:29 AM

MR. KAO: And was that pursuant to AT&T Technologies' policy at the time -- to treat licensees the same?

MR. GANT: Sorry, Chris, didn't mean to interrupt. Objection, vague, compound, foundation, leading. 10:29 AM

A. Yes.

MR. KAO: During the period from 1984 through 1987 what was your position again within AT&T Technologies? 10:29 AM

A. I was a manager, licensing software manager.

Q. And what was your day-to-day interaction with the licenses for the Unix Software 10:30 AM

during that time period? 10:30 AM

MR. GANT: With the licenses? I think you said licenses. Did you mean licensees? Did you mean licenses?

MR. KAO: You can read back the question. I think I meant what I asked. 10:30 AM

(REPORTER READ BACK.)

MR. GANT: Objection.

MR. KAO: I think part of that, I think part of that got lost there, but I think -- let me restate the question. 10:30 AM

What was your day-to-day involvement with the Unix System V licenses, during the period from 1984 through 1987?

MR. GANT: Objection, vague, compound. 10:30 AM

A. The specific licenses? The documents that are not specific to a customer?

MR. KAO: That's correct. Just license, I mean what was your -- let me try to re-ask it in a way that's not confusing. 10:31 AM

A. Okay.

MR. KAO: All I'm trying to understand is the day-to-day what it is you worked on in relation to the licensing of the Unix Software?

MR. GANT: Same objections. 10:31 AM

A. I would talk to licensees or potential licensees providing clarification and, and verbal content. One of the things that, that I kept track of was the items that we continually got, asked questions about, and we tried to address those down the road and perhaps revisions to the software agreements that would take place later on. 10:31 AM

There was a lot of administrative duties that I had responsibility for my account executives. I was involved in trade show planning and seminars, planning seminars and so on. So there was a variety of activities. My function was not dedicated 100 percent to, to negotiating licenses. 10:31 AM

MR. KAO: Now I'll have you read paragraph 10 of your Declaration into the record if you could. 10:32 AM

A. During the period from 1984 through 1987, AT&T Technologies licensed Unix System V and other Unix Source Code and related materials to a large number of licensees. 10:32 AM

Q. Is that a true statement, Mr. Frasure?

MR. GANT: Objection, vague, compound, leading, foundation. 10:32 AM

A. Yes.

1 MR. KAO: Do you know approximately 10:32 AM
2 how many licensees AT&T Technologies has licensed
3 Unix System V software too?
4 MR. GANT: Objection, foundation.
5 A. No. No, I don't. 10:32 AM
6 MR. KAO: Is it in the hundreds? Is
7 it in the thousands?
8 MR. GANT: Objection, foundation,
9 calls for speculation.
10 A. My best estimate would be that it was 10:32 AM
11 probably greater than a hundred.
12 MR. KAO: In the, in paragraph 10 you
13 refer to other Unix Source Code. Can you tell me,
14 besides Unix System V what other Unix Software AT&T
15 Technologies licensed to customers?
16 MR. GANT: I missed part of that, I'm
17 sorry. Can you read it back?
18 MR. KAO: Okay. Let me try to restate
19 that.
20 Paragraph 10 refers to other Unix 10:33 AM
21 Source Code, and my question is, apart from the Unix
22 System V Software, what other Unix Software did AT&T
23 Technologies license to customers during the time
24 period that you were at AT&T?
25 MR. GANT: Objection, foundation, 10:33 AM

1 vague. 10:33 AM
2 MR. KAO: You can answer.
3 A. We had a variety of software packages
4 that supplemented Unix. We had programs called
5 "Documenters Workbench" that was source code. We had 10:33 AM
6 text processing packages. We had database packages.
7 There was a number of, of add-on type packages that
8 you could license the source code from AT&T for.
9 Q. And was Unix System V the main
10 operating system software that AT&T was licensing at 10:34 AM
11 the time?
12 A. Yes, it was.
13 MR. GANT: Objection, foundation and
14 vague.
15 MR. KAO: Were there predecessor 10:34 AM
16 versions of Unix System V that you were responsible
17 for licensing also?
18 MR. GANT: Same objections.
19 A. The licensing that I was involved with
20 was all Unix System V. We upgraded the software. We 10:34 AM
21 no longer licensed previous versions of the soft --
22 we did not issue a new license for a previous version
23 of the software.
24 MR. KAO: Among your files did you
25 have in your files licenses for prior versions of 10:34 AM

1 Unix? 10:34 AM
2 MR. SZYMANSKI: When you say your
3 files -- with respect to what time period is your
4 question directed?
5 MR. KAO: Sure. Let me try to -- let 10:34 AM
6 me try to clarify that. During the time period from
7 1984 through '87 were you familiar at all with the
8 terms of the licensing of prior versions of the Unix
9 operating system?
10 MR. GANT: Objection, vague, compound. 10:35 AM
11 A. Yes.
12 MR. KAO: And what other versions were
13 you familiar with the terms of the licensing form?
14 MR. GANT: Same objection.
15 A. There was a number of versions, went by 10:35 AM
16 different name, system 37, different releases of 37.
17 Those are the first ones that come to mind, and
18 cannot recall any others at this point.
19 MR. KAO: For individual customers did
20 their files at AT&T during this time period 1984 10:35 AM
21 through '87 contain licenses for all of the different
22 versions of the Unix operating system that that
23 customer licensed?
24 MR. GANT: Objection, foundation,
25 compound, vague, leading. 10:35 AM

1 MR. KAO: You can answer. 10:36 AM
2 A. If a licensee, once they took out their
3 initial license with Unix, whatever that was, which
4 may have been years prior to my coming with the
5 organization, the files were maintained and updated 10:36 AM
6 with every new license that was issued to them.
7 Q. I'll have you read into the record
8 paragraph 11 of your Declaration?
9 A. The standard software agreement
10 pursuant to which AT&T Technologies 10:36 AM
11 licensed Unix System V source code and
12 related materials, referred to as the
13 software product or software products in
14 the agreement, granted licensees the right
15 to use the code, subject to various 10:36 AM
16 restrictions.
17 Q. Is that a true statement, Mr. Frasure?
18 MR. GANT: Objection, compound,
19 foundation, vague.
20 A. Yes. 10:36 AM
21 MR. KAO: Now, is it your
22 understanding, Mr. Frasure, that SOFTWARE PRODUCT in
23 all capital letters is a defined term in the software
24 agreements that AT&T Technologies entered into with
25 IBM and Sequent? 10:37 AM

MR. GANT: Objection, leading, vague, 10:37 AM

1 foundation.

2 A. Yes, it is.

3 MR. KAO: And what is your
4 understanding of what that term "Software Product" 10:37 AM
5 means?

6 MR. GANT: Objection, foundation,
7 calls for speculation, calls for a legal conclusion.

8 MR. KAO: You can answer the question.

9 A. It was the Unix Source Code provided on 10:37 AM
10 magnetic media or printed media, contained all the
11 documentation, printed documentation that went along
12 with the magnetic media to tell you how to install
13 it, how to use it, what the file structures were, how
14 one file related to another. That type of thing. 10:37 AM

15 MR. GANT: Could you read back the Q
16 and the A please?

17 (REPORTER READ BACK.)

18 MR. GANT: Move to strike as
19 non-responsive. 10:38 AM

20 MR. KAO: How is that non-responsive?

21 MR. GANT: I think it speaks for
22 itself. The question was what the terms means, and
23 the answer was not a description of what the term
24 means. 10:38 AM
25

1 MR. KAO: I'll have you review 10:39 AM
2 paragraph 12 of your Declaration if you could,
3 Mr. Frasure.

4 A. I've read it.

5 Q. Do you believe each of the sentences 10:40 AM
6 contained in paragraph 12 of your Declaration are
7 true statements?

8 MR. GANT: Objection, compound, vague,
9 lack of foundation, calls for a legal conclusion,
10 calls for speculation. 10:40 AM

11 MR. KAO: You can answer the question.

12 A. Yes.

13 Q. And let me direct you to the text that
14 starts below the bullet points on page five of your
15 Declaration. Do you see that? 10:40 AM

16 A. Yes.

17 Q. Can I ask you to read that text into
18 the record please?

19 A. Each of these provisions was intended
20 to define the scope of the licensees' 10:40 AM
21 rights only with respect to the software
22 product or software products. In other
23 words, the Unix System V source code and
24 related materials. We did not intend these
25 provisions to restrict our licensees use, 10:41 AM

1 export, disclosure or transfer of anything 10:41 AM
2 besides the Unix -- besides the licensed
3 Unix System V source code and related
4 materials. It would be inconsistent with
5 the language of the software agreements and 10:41 AM
6 the intentions of AT&T Technologies in
7 licensing Unix System V to say that the
8 provisions apply for instance to our
9 licensees' own code, (that for example,
10 they develop). 10:41 AM

11 Q. Do you believe each of those sentences
12 that you just read into the record to be true?

13 MR. GANT: Objection, vague --

14 A. -- yes, I do. I'm sorry.

15 MR. GANT: The objection is vague, 10:41 AM
16 compound, lack of foundation, calls for speculation
17 and legal conclusion.

18 MR. KAO: You can answer the question.

19 A. Yes.

20 Q. Now, looking at the provisions that you 10:42 AM
21 referred to in your Declaration, let's sort of walk
22 through them one by one, the first is Section 2.01,
23 and you can look at, for example, the document behind
24 Tab 1, which is the software agreement.

25 Are you there? 10:42 AM

1 A. Um-hum. 10:42 AM

2 Q. And is it your understanding from
3 looking at the software agreement, Section 2.01 that
4 the rights and restrictions contained in that Section
5 2.01 relate to the SOFTWARE PRODUCTS -- in capital 10:42 AM
6 letters?

7 MR. GANT: I'm going to object on
8 multiple grounds, and I'll list the bullet points in
9 a second, but I'm fundamentally confused because
10 section -- paragraph 12 doesn't refer specifically to 10:43 AM
11 any exhibit and you're directing the witness to an
12 exhibit.

13 So the question is improper on that
14 basis and is otherwise very compound, lacks
15 foundation. 10:43 AM

16 MR. KAO: If you'd like me to clarify
17 that I will.

18 Mr. Frasure, if you can look at
19 paragraph 12 of your Declaration, and do you see in
20 the bullet points certain sections of an agreement 10:43 AM
21 are called out in bullet points?

22 A. Yes.

23 Q. Do you understand those sections that
24 you refer to are sections from the software
25 agreements contained at Tab 1 of your Declaration, 10:43 AM

1 and at Tab 5 of your Declaration? 10:43 AM
 2 A. Yes, I do.
 3 Q. And again in Tab 1 of your Declaration
 4 is the IBM Software Agreement that IBM entered into
 5 with AT&T Technologies, right? 10:43 AM
 6 A. Yes, it is.
 7 Q. And Tab 5 is the Sequent Software
 8 Agreement that Sequent entered into with AT&T
 9 Technologies; is that right?
 10 A. Yes. 10:44 AM
 11 Q. So you understand that in paragraph 12
 12 of your Declaration you're referring to the sections
 13 in those agreements, correct?
 14 A. Yes.
 15 MR. GANT: Objection, vague. 10:44 AM
 16 MR. KAO: Now, referring to the IBM
 17 Software Agreement, Section 2.01, looking at that
 18 section, is it your understanding that the rights
 19 that AT&T was granting and the restrictions that AT&T
 20 was imposing on the Unix System V, refers to -- 10:44 AM
 21 strike that.
 22 Let me rephrase.
 23 MR. GANT: You're going to need to
 24 pause after this question.
 25 MR. SZYMANSKI: I'm sorry? 10:44 AM

1 MR. GANT: For me to object. 10:44 AM
 2 MR. SZYMANSKI: Before the question?
 3 MR. GANT: I said after.
 4 MR. KAO: He apparently can read minds
 5 so he knows what I'm going to ask. 10:44 AM
 6 MR. GANT: I see where the question is
 7 going.
 8 MR. SZYMANSKI: I see.
 9 MR. KAO: Might want to wait.
 10 Now, Mr. Frasure, looking at Section 10:45 AM
 11 2.01, is it your understanding that Section 2.01
 12 places restrictions on and grants the rights to use
 13 the SOFTWARE PRODUCTS -- capital letters -- SOFTWARE
 14 PRODUCTS.
 15 MR. GANT: Objection, leading, vague, 10:45 AM
 16 foundation, compound, calls for speculation and to a
 17 legal conclusion.
 18 MR. KAO: You can answer the question.
 19 A. Yes.
 20 Q. And with respect to section 2.05 of the 10:45 AM
 21 Agreement, is it your understanding that Section 2.05
 22 concerns the SOFTWARE PRODUCT in capital letters?
 23 MR. GANT: Same objections.
 24 A. Yes.
 25 MR. KAO: Looking at Section 4.01 of 10:45 AM

1 the Software Agreement, is it your understanding that 10:45 AM
 2 Section 4.01 applies to SOFTWARE PRODUCTS in capital
 3 letters?
 4 MR. GANT: Same objections.
 5 A. Yes. 10:46 AM
 6 MR. KAO: And looking at Section
 7 7.06(a), is it your understanding that 7.06(a) of the
 8 Software Agreement applies to the SOFTWARE PRODUCTS
 9 in capital letters?
 10 MR. GANT: Same objections. 10:46 AM
 11 A. Yes.
 12 MR. KAO: And finally looking at
 13 Section 7.10, is it your understanding that section
 14 7.10 applies to the SOFTWARE PRODUCT in capital
 15 letters? 10:46 AM
 16 MR. GANT: Same objections.
 17 A. Yes.
 18 MR. KAO: Now, is it your
 19 understanding of these provisions of the software
 20 agreements that these provisions placed any 10:46 AM
 21 restrictions on the use, export, disclosure or
 22 transfer of any source code that was written by the
 23 licensee, in this case IBM or Sequent?
 24 MR. GANT: Objection, leading, vague,
 25 foundation, calls for speculation, calls for legal a 10:47 AM

1 conclusion and compound. 10:47 AM
 2 MR. KAO: You can answer the question.
 3 A. I do not believe, if I understood your
 4 question correctly, that it restricted them in any
 5 way to do with what they chose with the soft -- with 10:47 AM
 6 the software source code that they generated
 7 themselves.
 8 MR. GANT: I also move to strike if
 9 the witness isn't sure if he understands the
 10 question. I certainly object to an answer to a
 11 question --
 12 (Interruption by reporter.)
 13 MR. GANT: I move to strike the
 14 response insofar as Mr. Frasure indicated he's not
 15 sure he understands the question, and I object to an 10:47 AM
 16 answer to which the witness isn't sure he understands
 17 the question.
 18 MR. KAO: Let me ask it in a way that
 19 you hopefully can understand.
 20 Mr. Frasure, is it your understanding 10:47 AM
 21 of these sections of the software agreement that
 22 we've just looked at, that AT&T Technologies was
 23 placing any restrictions on IBM's ability to use,
 24 export, disclose or transfer the code that IBM
 25 developed on its own? 10:48 AM

1 MR. GANT: Objection, leading, vague, 10:48 AM
2 compound, lacks foundation, calls for speculation and
3 for a legal conclusion.

4 MR. KAO: You can answer the question.

5 A. No. 10:48 AM

6 Q. Can you tell me what, in your
7 understanding these sections that you discuss in your
8 Declaration are intended to place restrictions on?

9 MR. GANT: Objection, compound, vague,
10 lacks foundation, calls for speculation and a legal
11 conclusion. 10:48 AM

12 MR. KAO: You can answer the question.

13 A. The restrictions were put on the actual
14 Unix System V source code product, that the licensee
15 licensed from us. They were -- had to follow the, 10:48 AM
16 the requirements, the restrictions in the software
17 agreement.

18 Q. Can I ask you to read, Mr. Frasure,
19 paragraph 13 of your Declaration into the record?

20 A. Yes. 10:49 AM
21 The standard software agreement also
22 granted licensees to the right to modify
23 Unix System V source code and to prepare
24 derivative works based upon the code, as
25 AT&T Technologies intended the agreements 10:49 AM

1 and as we communicated to our licensees, 10:49 AM
2 although the licensees owned their
3 modifications and derivative works, since
4 they created them, and were thus permitted
5 to use or disclose them as they might 10:49 AM
6 choose, those portions of the modifications
7 or derivative works consisting of any Unix
8 System V source code were subject to the
9 same restrictions as the licensed Unix
10 System V source code. 10:50 AM

11 Q. Do you believe each of those sentences
12 in paragraph 13 of your Declaration to be true?

13 MR. GANT: Objection, vague, compound,
14 lacks foundation and calls for speculation and a
15 legal conclusion. 10:50 AM

16 A. Yes.

17 MR. KAO: Is it your understanding
18 that in the software agreements that AT&T
19 Technologies entered into with IBM and Sequent, that
20 IBM and Sequent were allowed to create modifications 10:50 AM
21 and derivative works of the Unix System V Software
22 Product?

23 MR. GANT: Same objections.

24 A. Yes.

25 MR. KAO: And with respect to the 10:50 AM

1 modifications and derivative works that IBM or 10:50 AM
2 Sequent created, what restrictions did AT&T
3 Technologies intend through the software agreement to
4 place on IBM's and Sequent's use of that -- those
5 modifications and derivative works? 10:50 AM

6 MR. GANT: Same objections.

7 A. None. To the extent that they didn't
8 contain Unix System V source code.

9 MR. KAO: So just so I understand, if,
10 if the modification of derivative work contained Unix 10:51 AM
11 System V source code, then it would be your testimony
12 that there are some restrictions?

13 MR. GANT: Same objections.

14 A. That is correct.

15 MR. KAO: To what extent would those 10:51 AM
16 or -- strike that.

17 To what would the restrictions apply
18 to?

19 MR. GANT: Same objections.

20 A. It would apply to the modification or 10:51 AM
21 derivative work if it contained Unix System V source
22 code.

23 MR. KAO: Now, if IBM or Sequent were
24 to well -- strike that.

25 Is it your understanding that a 10:51 AM

1 modification or derivative work could contain both 10:51 AM
2 Unix System V source code and source code that had
3 been developed by the licensee, like IBM or Sequent?

4 MR. GANT: Same objections.

5 A. Yes. 10:51 AM

6 MR. KAO: Were there any restrictions
7 on IBM's or Sequent's use of the code that they
8 developed on their own that was in this modification
9 or derivative work?

10 MR. GANT: Same objections. 10:52 AM

11 A. No.

12 MR. KAO: So your understanding is
13 that the, the -- of the restrictions AT&T
14 Technologies intended to impose with respect to the
15 modifications or derivative works were limited to the 10:52 AM
16 Unix System V source code that was contained in that,
17 in those modifications or derivative works?

18 MR. GANT: Same objections.

19 A. Yes.

20 MR. KAO: Is it your understanding 10:52 AM
21 then that IBM and Sequent were free to take out of
22 this modification or derivative work any of the code
23 they developed on their own and do whatever they want
24 with it?

25 MR. GANT: Same objections. 10:52 AM

1 A. Yes. 10:52 AM
 2 MR. KAO: Was this issue of whether a
 3 licensee could use how it wanted code that it
 4 developed on its own something that was discussed
 5 with licensees during the time that you worked at 10:53 AM
 6 AT&T from 1984 to 1987?
 7 MR. GANT: I think these are same
 8 objections, but just to make clear, the question is
 9 leading, vague, compound, lacks foundation, calls for
 10 speculation and for a legal conclusion. 10:53 AM
 11 MR. KAO: You can answer the question.
 12 A. I forgot the question.
 13 Q. Let me restate the question.
 14 The question was simply whether the
 15 issue of whether a licensee could use code that it 10:53 AM
 16 developed on its own was discussed amongst AT&T
 17 Technologies and its licensees during the time period
 18 that you worked at AT&T?
 19 MR. GANT: Same objections.
 20 A. That is correct it was discussed. 10:53 AM
 21 MR. KAO: And what explanation did you
 22 give to the licensees that you talked to regarding
 23 their right to use their own code that they
 24 developed?
 25 MR. GANT: Objection, vague and 10:53 AM

1 compound. 10:53 AM
 2 A. We explained to them verbally, and if
 3 required in writing, that we did not own, tried to
 4 clarify that we did not own the source code that they
 5 generated themselves. We had no interest in that. 10:54 AM
 6 MR. KAO: Let me ask you to now read
 7 for the record paragraph 14 of your Declaration.
 8 MR. GANT: Sorry, before we do that,
 9 could I just have the last Q and A read back, please?
 10 (REPORTER READ BACK.) 10:55 AM
 11 MR. GANT: Objection, move to strike
 12 as non-responsive.
 13 MR. KAO: Turning back to paragraph 14
 14 of your Declaration I think where we were is that I
 15 had asked you to read paragraph 14 into the record, 10:55 AM
 16 Mr. Frasure?
 17 A. In early versions of the standard
 18 software agreement, again including the IBM
 19 Software Agreement and the Sequent Software
 20 Agreement, Section 2.01 contained the 10:55 AM
 21 following language regarding modifications
 22 and derivative works:
 23 Such right to use includes the
 24 right to modify such software product and
 25 to prepare derivative works based on such 10:56 AM

1 software product provided the resulting
 2 materials are treated hereunder as part of
 3 the original software product. 10:56 AM
 4 As we assured our licensees this
 5 language does not, and was never intended
 6 to give AT&T Technologies the right to 10:56 AM
 7 assert ownership or control over
 8 modifications or derivative works prepared
 9 by its licensees except to the extent of
 10 the licensed Unix System V source code that
 11 was included in such modifications or 10:56 AM
 12 derivative works.
 13 The term "resulting materials" in
 14 the context of the software agreements was
 15 intended only to mean those portions of a 10:56 AM
 16 licensee's modification or derivative works
 17 that included the licensed Unix System V
 18 source code.
 19 Q. Do you believe each of the sentences in
 20 now paragraph 14 of your Declaration to be true? 10:57 AM
 21 MR. GANT: Objection, vague, compound,
 22 lacks foundation, calls for speculation and a legal
 23 conclusion.
 24 A. Yes.
 25 MR. GANT: Am I speaking loudly enough? 10:57 AM

1 MR. KAO: Did you have any 10:57 AM
 2 understanding during the time that you worked at
 3 AT&T, from 1984 to 1987, that this language that you
 4 quoted in your Declaration in paragraph 14, gave any
 5 right to AT&T Technologies to control its licensees 10:57 AM
 6 use and disclosure of code that those licensees wrote
 7 themselves?
 8 MR. GANT: Can you read that back
 9 please?
 10 (REPORTER READ BACK).
 11 MR. KAO: All right. Let me, let me
 12 go slower here so we can get it down.
 13 Did you have any understanding during
 14 the time that you were employed at AT&T from 1984 to
 15 1987 that this language in Section 2.01 gave AT&T 10:58 AM
 16 Technologies any right to control its licensees use
 17 or disclosure of the code that those licensees wrote
 18 on their own?
 19 MR. GANT: Objection, vague, compound,
 20 lacks foundation, calls for speculation and a legal 10:58 AM
 21 conclusion.
 22 MR. KAO: You can answer the question.
 23 A. We asserted no ownership over, over
 24 that source code that the licensees prepared, wrote
 25 themselves. 10:59 AM

MR. KAO: You can answer the question. 11:11 AM

A. It was to expressly convey that if IBM was to use methods and concepts in their source code that they developed, that AT&T had no claim of ownership or control over the software. 11:11 AM

Q. Now, is it your understanding that AT&T Technologies intended this same provision to apply to all of its other licensees as well?

MR. GANT: Objection, vague, leading, lack of foundation, calls for speculation. 11:11 AM

A. Yes.

MR. KAO: And why is that?

A. Our policy --

MR. GANT: -- same objections, I'm sorry. 11:12 AM

A. Our policy was as I had stated earlier that if we provided clarification in a software agreement then that clarification would apply to all licensees of that, of that agreement, Unix System V Agreement which we are, we are talking about; and if, 11:12 AM if rights were changed in the, in a side letter then they would extend to all licensees who had the Unix System V Software Agreement.

Q. Would that be the case even if the licensee did not have a side letter similar to the 11:12 AM

one that AT&T Technologies gave to IBM? 11:12 AM

MR. GANT: Would you please read back the question.

(REPORTER READ BACK.)

MR. GANT: Objection, leading, vague, 11:13 AM lack of foundation, calls for speculation and a legal conclusion.

A. Yes. It goes back to the last sentence of paragraph 9, this document that I signed.

If I can read that sentence: 11:13 AM

While the language and side letters to the licensees may have varied from one licensee to the next, and while some licensees did not have side letters, our intent was to hold all licensees to the same basic 11:13 AM standard.

MR. SZYMANSKI: Let the record reflect that the witness was reading from paragraph 9, in Exhibit 1 to the deposition.

MR. GANT: The Declaration. 11:13 AM

MR. KAO: Okay. Now, turning back to your Declaration page six, can I ask you to read paragraph 15 into the record please.

A. Obviously any materials created by the licensees that could not even be considered 11:14 AM

modifications or derivative works of Unix 11:14 AM

System V were not subject to the software agreements at all. Licensees were free to use and disclose any such materials.

Q. Do you believe those sentences to be true? 11:14 AM

MR. GANT: Objection, vague, compound, lack of foundation, calls for speculation and a legal conclusion.

A. Yes. 11:14 AM

MR. KAO: I just like to note for the record that my question was, are these statements true, and you had a long running objection.

I don't see how my question at all raises any of the objections that you state for the 11:14 AM record. But you're entitled to state your objections.

MR. GANT: If you would want withdraw and reformulate the question I'm happy to explain it to you. If you're not going to withdraw the 11:15 AM question, then we can just move ahead.

MR. KAO: We will move ahead.

Can you read paragraph 16 of your paragraph into the record, Mr. Frasure.

A. As I understood it, and as I believe 11:15 AM

AT&T Technologies intended it at the time 11:15 AM

Section 2.01 did not in any way expand the scope of the software agreement to restrict our licensees' use, export, disclosure or transfer of their own original code, even 11:15 AM if such code was contained in a modification or derivative work of Unix System V. The purpose of the software agreement was to protect AT&T Technologies, Unix System V source code, and was never 11:15 AM meant to encumber our licensees' own work.

Q. Are the sentences in paragraph 16 of your Declaration true?

MR. GANT: Objection, vague, compound, lack of foundation, calls for speculation and a legal 11:16 AM conclusion.

A. Yes.

MR. KAO: Can you read paragraph 17 of your Declaration into the record.

A. Some of our licensees sought further 11:16 AM clarification that they, not AT&T Technologies, owned and controlled the modifications and derivative works prepared by or for them. We invariably provided this requested clarification, both orally 11:16 AM

DAVID FRASURE

<p>Page 61</p> <p>1 and in writing, when asked, because it was 11:16 AM</p> <p>2 in keeping with our original intent with</p> <p>3 respect to all of our licensees under the</p> <p>4 standard software agreement.</p> <p>5 Q. Are the statements in paragraph 17 of 11:16 AM</p> <p>6 your Declaration true?</p> <p>7 MR. GANT: Same objections.</p> <p>8 A. Yes.</p> <p>9 MR. KAO: Sitting here today,</p> <p>10 Mr. Frasure, do you recall specific instances that of 11:16 AM</p> <p>11 licensees coming to AT&T Technologies and asking for</p> <p>12 clarification with respect to Section 2.01?</p> <p>13 A. Yes.</p> <p>14 Q. Can you, can you describe those for me</p> <p>15 to the extent you remember them? 11:17 AM</p> <p>16 A. Well, obviously I remember the it--</p> <p>17 the IBM negotiations. I remember negotiations with</p> <p>18 Digital Equipment Company, DEC as they were called up</p> <p>19 in New England.</p> <p>20 I remember it with Pyramid Technologies 11:17 AM</p> <p>21 who were in California. I can remember it with Sun</p> <p>22 Micro Systems in California.</p> <p>23 I can remember it with Atari</p> <p>24 Corporation in California. There was a company</p> <p>25 called Opus that was in California, o-p-u-s. I can 11:17 AM</p>	<p>Page 63</p> <p>1 This clarification, and those like 11:19 AM</p> <p>2 it that we provided to other licensees, did</p> <p>3 not represent a change to the standard</p> <p>4 software agreement. It merely spelled out</p> <p>5 what AT&T Technologies had always intended, 11:19 AM</p> <p>6 that AT&T Technologies did not assert any</p> <p>7 right to control the use and disclosure of</p> <p>8 modifications and derivative works prepared</p> <p>9 by its licensees, except to the extent of</p> <p>10 the licensed Unix System V source code 11:19 AM</p> <p>11 included in such modifications and</p> <p>12 derivative works.</p> <p>13 Q. Are each of the sentences in paragraph</p> <p>14 18 true?</p> <p>15 MR. GANT: Objection, vague, compound, 11:20 AM</p> <p>16 lack of foundation, calls for speculation and a legal</p> <p>17 conclusion.</p> <p>18 A. Yes.</p> <p>19 MR. KAO: And if you can look with me</p> <p>20 at the letter behind Tab 4 of your Declaration, is 11:20 AM</p> <p>21 that the letter that you're referring to in paragraph</p> <p>22 18 of your Declaration?</p> <p>23 A. Yes, it is.</p> <p>24 Q. And in particular on page two of that</p> <p>25 letter, paragraph 2, is that the paragraph that 11:20 AM</p>
<p>Page 62</p> <p>1 recall discussing it with them, and there was various 11:18 AM</p> <p>2 other telephone conversations and meetings that the</p> <p>3 same subject was, was discussed.</p> <p>4 Q. Can you tell me what position you took</p> <p>5 on, on AT&T's behalf regarding the language in 11:18 AM</p> <p>6 Section 2.01?</p> <p>7 MR. GANT: Objection, vague, compound.</p> <p>8 A. As it is stated here, that we exercise</p> <p>9 no ownership over that, that source code. That was</p> <p>10 theirs free to do whatever they wanted to with that 11:18 AM</p> <p>11 source code.</p> <p>12 MR. KAO: Can I ask you to read</p> <p>13 paragraph 18 of your Declaration into the record.</p> <p>14 A. Yes.</p> <p>15 For example, paragraph A.2 of the IBM Side 11:18 AM</p> <p>16 Letter, with which I am familiar because I</p> <p>17 negotiated it, clarified the standard</p> <p>18 provisions as follows:</p> <p>19 Regarding Section 2.01 we agree</p> <p>20 that modifications and derivative works 11:19 AM</p> <p>21 prepared by or for IBM are owned by IBM.</p> <p>22 However, ownership of any portion</p> <p>23 or portions of software products included</p> <p>24 in any such modification or derivative work</p> <p>25 remains with AT&T Technologies. 11:19 AM</p>	<p>Page 64</p> <p>1 you're referring to? 11:20 AM</p> <p>2 A. Yes.</p> <p>3 Q. And did you participate in negotiating</p> <p>4 this paragraph two that appears in the letter behind</p> <p>5 Tab 4? 11:20 AM</p> <p>6 MR. GANT: Objection, vague.</p> <p>7 A. Yes.</p> <p>8 MR. KAO: Did you understand at the</p> <p>9 time that the language in paragraph 2 of this letter</p> <p>10 agreement was intended to change the meaning in any 11:21 AM</p> <p>11 way of the Section 2.01 that appears in the Unix</p> <p>12 System V Software Agreement?</p> <p>13 MR. GANT: Objection, vague, lack of</p> <p>14 foundation, calls for speculation and a legal</p> <p>15 conclusion. 11:21 AM</p> <p>16 A. No.</p> <p>17 MR. KAO: What then was the purpose of</p> <p>18 the clarification?</p> <p>19 A. Clarification.</p> <p>20 Q. Excuse me? 11:21 AM</p> <p>21 A. Clarification.</p> <p>22 Q. Can you read paragraph 19 into the</p> <p>23 record please?</p> <p>24 A. Indeed, since a number of licensees had</p> <p>25 contacted my Software Sales and Licensing 11:22 AM</p>

1 group regarding the meaning of Section 11:22 AM
 2 2.01, we announced in early 1985 that
 3 seminars hosted by AT&T Technologies and in
 4 a newsletter called "Dollar Echo" that we
 5 would be modifying the language of our 11:22 AM
 6 standard software agreements to clarify
 7 even further that licensees own their
 8 modifications and derivative works, except
 9 to the extent of the licensed Unix System
 10 V source code included in such 11:22 AM
 11 modifications and derivative works.

12 The Dollar Echo newsletter was
 13 published by the Software Sales and
 14 Licensing group for all licensees of Unix
 15 System V, and was intended, as we put it in 11:22 AM
 16 the newsletter, to keep the licensees
 17 abreast of any product announcements,
 18 policy changes, company business and
 19 pricing structures. The guidance we
 20 published in Dollar Echo applied to all of 11:22 AM
 21 AT&T Technologies Unix System V licensees,
 22 including IBM and Sequent.

23 Q. Are each of the sentences in paragraph
 24 19 of your Declaration true?

25 MR. GANT: Objection, vague, compound, 11:23 AM

1 lack of foundation, calls for speculation and a legal 11:23 AM
 2 conclusion.

3 A. Yes.

4 MR. SZYMANSKI: Can we take a break?
 5 We've been at this for about an hour and five 11:23 AM
 6 minutes.

7 MR. KAO: Yeah, that's fine.

8 THE VIDEOGRAPHER: Going off record
 9 the time is 11:23.

10 (A recess was taken.) 11:34 AM

11 THE VIDEOGRAPHER: Back on the record,
 12 the time is 11:37.

13 MR. KAO: Before the break,
 14 Mr. Frasure, we were looking at paragraph 19 of your
 15 Declaration; do you remember that? 11:37 AM

16 A. Yes.

17 Q. Okay. And in paragraph 19 you discuss
 18 a newsletter called Dollar Echo?

19 A. Correct.

20 Q. Can you tell me what Dollar Echo is? 11:37 AM

21 A. It was a newsletter that we put out to
 22 provide information to our, our licensees of upcoming
 23 events, perhaps seminars, educational courses. We
 24 covered new product announcements, source code items
 25 that they could add-on units, source code items for 11:37 AM

1 add-on units for Unix System V if they could license. 11:38 AM
 2 AM

3 We notified them of licensing changes, policy
 4 changes, that type of thing. It was effort to keep
 5 our licensees updated with the latest events
 6 surrounding Unix System V. 11:38 AM

7 Q. Do you know why it's named Dollar Echo
 8 by any chance?

9 A. In the Unix operating system the dollar
 10 sign is, is the prompt, so when you would always come
 11 back to a dollar, and echo is a term that you can use 11:38 AM
 12 if you want to type something in it will echo it back
 13 to you, so it was just... I can't remember how we
 14 came up with the name, but that's -- but the dollar
 15 is the Unix prompt sign, so that's what it derived
 16 from. 11:38 AM

17 Q. Turning now to paragraph 20 of your
 18 Declaration can you read that into the record?

19 A. The April 1985 edition of the Dollar
 20 Echo, a true and correct copy of which is 11:39 AM
 21 attached hereto as Exhibit 8, summarizes
 22 presentations I made at seminars hosted by
 23 AT&T Technologies in New York and Santa
 24 Clara, outlining the changes and
 25 clarifications that we intended to make to
 the standard software and sublicensing 11:39 AM

1 agreements in order to make the contracts 11:39 AM
 2 more responsive to the needs of the
 3 licensees.

4 With respect to Section 2.01 of
 5 the software agreement the newsletter 11:39 AM
 6 states that [1] language, sorry, that
 7 language changes will be made to clarify
 8 ownership of modifications or derivative
 9 works prepared by a licensee.

10 At the seminars, and again in the 11:39 AM
 11 newsletter, we emphasize that the changes
 12 we would be making to Section 2.01 did not
 13 alter the meaning of the standard software
 14 agreements that our Unix System V licensees
 15 had already entered into, but instead were 11:40 AM
 16 intended to provide clarification as to the
 17 original intent of the section.

18 Q. Are the sentences in paragraph 20 of
 19 your Declaration true?

20 MR. GANT: Objection, leading, vague, 11:40 AM
 21 compound, lack of foundation, calls for speculation
 22 and a legal conclusion.

23 A. Yes.

24 MR. KAO: Now if you can look at the
 25 document behind Tab 8 of your Declaration, which 11:40 AM

1 appears to be the April 1985 edition of Dollar Echo? 11:40 AM

2 A. Yes.

3 Q. Do you, do you recognize this Dollar
4 Echo document?

5 A. Yes. 11:40 AM

6 MR. GANT: Objection, vague.

7 MR. KAO: Did you have any
8 responsibility for preparing this Dollar Echo
9 newsletter in April 1985?

10 A. The people that prepared it worked for 11:40 AM
11 me, and much of the content put in here, particularly
12 regarding the licensing agreements, was put in here
13 at my direction as well as the direction of the AT&T
14 attorneys.

15 Q. And if you turn to pages, I guess turn 11:41 AM
16 first to page five of the Dollar Echo newsletter,
17 there's an column headed "AT&T Announces
18 Changes/Clarifications to Software and Sublicensing
19 Agreements. Do you see that?

20 A. Yes. 11:41 AM

21 MR. GANT: This is the page number,
22 it's not actually the fifth page. So the record's --

23 MR. KAO: -- sure. It's the page
24 that's numbered five at the bottom.

25 Did you review this section of Dollar 11:41 AM

1 Echo prior to its publication? 11:41 AM

2 MR. GANT: Objection, vague, lack of
3 foundation.

4 A. Yes.

5 MR. KAO: The, the first paragraph of 11:41 AM
6 this section discusses the business and technical
7 seminars held March 3 through 4, and March 6-7 by
8 Dave Frasure, Sales Manager. Do you see that?

9 A. Yes.

10 Q. Do you remember the business and 11:42 AM
11 technical seminars that, that were held?

12 MR. GANT: Objection, vague, compound.
13 Sorry.

14 A. Yes.

15 MR. KAO: What was the purpose of 11:42 AM
16 those seminars to the extent you can remember?

17 A. Typically the seminars were conducted
18 that -- first of all let me state that you had to
19 have a Unix System V license to come to a seminar.
20 We had to.. since we dealt with companies, and 11:42 AM
21 generally their attorneys or business
22 representatives, each person who attended the seminar
23 had to bring a copy, of signed Unix System -- cover
24 page of the Unix System V licensee and proof that
25 they indeed worked for that company. 11:42 AM

1 There were many things discussed at the 11:43 AM
2 seminars. We did discuss new software packages. We
3 provided some type of educational information,
4 techniques of using Unix Software, how to prepare
5 drivers for printers and so on that were coming out. 11:43 AM

6 There was technical information
7 provided, new product information, and business
8 changes, software licensing agreement changes as we
9 have said here.

10 MR. KAO: If you look at the very last 11:43 AM
11 bullet point on this page five of the Dollar Echo
12 newsletter, the heading is "Clarification of
13 Ownership of Derived Works." The bullet point reads:

14 Language changes will be made to clarify
15 ownership of modifications or derivative 11:43 AM
16 works prepared by a licensee.

17 Is that the language that you discuss
18 in paragraph 20 of your Declaration?

19 MR. GANT: Objection, vague and
20 leading. 11:44 AM

21 A. Yes.

22 MR. KAO: Do you remember making
23 presentations regarding this particular point
24 regarding ownership of derived works at seminars?

25 MR. GANT: Could you read the question

1 back please. 1:44 AM

2 (REPORTER READ BACK.)

3 MR. GANT: Objection, vague and
4 leading.

5 A. Yes. 1:44 AM

6 MR. KAO: What do you remember telling
7 licensees about this point at the seminars that you
8 conducted?

9 MR. GANT: Same objections.

10 A. I did a narrative, but at that time we 11:44 AM

11 had flip charts that was really before computers were
12 able to project up on the screens and so on. But I

13 had a set of flip charts that were prepared by an
14 artist if you will that just had large block letters

15 of the new language that we would be posing, and we 11:45 AM
16 had in different colors either struck out or new
17 words we were adding to, to the paragraphs.

18 The lawyers, AT&T attorneys had
19 prepared the language and we would present that, the
20 actual language at the seminar. So I had a series of 11:45 AM
21 charts that I went through to explain the various
22 changes that were going to be made to the software
23 agreement.

24 MR. KAO: Do you remember making -- or
25 do you remember explaining the changes regarding 11:45 AM

11:45 AM

1 derivative works specifically?

2 MR. GANT: Same objections.

3 A. I remember explaining the changes to
4 paragraph 2.01, yes, which would include derivative
5 works and modifications. 11:45 AM

6 MR. KAO: And can you just explain for
7 me what it is you told the licensees about Section
8 2.01?

9 A. Just that we, AT&T had no intent to
10 claim ownership to that software code that they 11:46 AM
11 developed themselves. In essence that's what we
12 told them to the extent it did not contain Unix code.
13 But if they developed it, if they wrote it, it was
14 their code. They owned that.

15 MR. GANT: Can you read back the Q and 11:46 AM
16 the A please.

17 (REPORTER READ BACK.)

18 MR. KAO: Turning back to your
19 Declaration, can you read paragraph 21 of your
20 Declaration into the record please? 11:47 AM

21 A. Yes.

22 The August 1985 edition of Dollar Echo, a
23 true and correct copy of which is attached
24 hereto as Exhibit 9, describes in detail
25 the changes we made to the standard 11:47 AM

11:47 AM

1 software and sublicensing agreements.

2 With respect to Section 2.01 the
3 newsletter states -- quoting here Section
4 2.01 the last sentence was added to assure
5 licensees that AT&T will claim no ownership 11:47 AM
6 in the software that they developed, only
7 the portion of the software developed by
8 AT&T.

9 Again as we made clear in the
10 newsletter the revised language was added 11:47 AM
11 only to assure licensees that AT&T
12 Technologies did not claim any right to its
13 licensees' original work contained in
14 modifications or derivatives of Unix
15 System V. The language did not represent 11:47 AM
16 in any way a departure from the original
17 intent of Section 2.01.

18 Q. Are the sentences in paragraph 21 of
19 your Declaration true, Mr. Frasure?

20 MR. GANT: Objection, leading, vague, 11:48 AM
21 compound, lack of foundation, calls for speculation
22 and a legal conclusion.

23 A. Yes.

24 MR. KAO: If you can look with me at
25 the document behind Tab 9 of your Declaration, which 11:48 AM

11:48 AM

1 appears to be the August 1985 Dollar Echo newsletter. 11:48 AM

2 A. Yes.

3 Q. Do you recognize this newsletter,

4 Mr. Frasure?

5 A. Yes. 11:48 AM

6 Q. Did you review this newsletter in
7 August 1985 before it was sent out to Unix System V
8 licensees?

9 MR. GANT: Objection, foundation.

10 A. I'm sure I did, yes. 11:48 AM

11 MR. KAO: In particular if you can
12 turn now to page five, the page that's labelled page
13 five of this newsletter, there's a section headed
14 "AT&T Makes Changes to Software Agreements." Do you
15 see that? 11:49 AM

16 A. Yes.

17 Q. Did you review this section of the
18 Dollar Echo newsletter before it was sent out to
19 licensees?

20 MR. GANT: Objection, vague and 11:49 AM
21 compound.

22 A. Yes.

23 MR. KAO: And looking now at the first
24 column there's a paragraph that begins Section 2.01.
25 Do you see that? 11:49 AM

11:49 AM

1 A. Yes. 11:49 AM

2 Q. Is that the section that you discuss in
3 paragraph 21 of your Declaration?

4 MR. GANT: Objection, vague, leading.

5 A. Yes. 11:49 AM

6 MR. KAO: Turning back now to your
7 Declaration, can I ask you to read paragraph 22 into
8 the record?

9 A. An example of the revised language
10 referred to in the Dollar Echo newsletter 11:49 AM
11 appears in Section 2.01 of the software
12 agreement between AT&T Information Systems,
13 and the Santa Cruz Operation, Inc. entered
14 into in May 1987, a true and correct copy
15 of which is attached hereto as Exhibit 10. 11:50 AM

16 That agreement includes the
17 following language:

18 Such right to use includes the
19 right to modify such software product and
20 to prepare derivative works based on such 11:50 AM
21 software product provided that any such
22 modification or derivative work that
23 contains any part of a software product,
24 subject to this agreement, is treated
25 hereunder the same as such software 11:50 AM

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11:50 AM

product. AT&T-IS -- Information Systems --
claims no ownership interest in any portion
of such a modification or derivative work
that is not part of a software product.
Emphasis added. 11:50 AM

This new version of Section 2.01
is present in the standard Unix System V
licenses executed after August 1985. As
stated above, however, the revised language
was intended only to clarify the original 11:51 AM
meaning of Section 2.01 in the standard
software agreement, agreement, not to
change it.

AT&T Technologies interpreted
Section 2.01 of all the software agreements 11:51 AM
the exact same way.

Q. Is each sentence in paragraph 22nd of
your Declaration true?

MR. GANT: Objection, leading, vague,
compound, lack of foundation, calls for speculation 11:51 AM
and legal conclusion.

A. Yes.

MR. KAO: If you could turn with me to
the document behind Tab 10 of your Declaration. It's
the last one. 11:51 AM

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11:53 AM

MR. KAO: And just so the record is
clear, what is your understanding of what AT&T
intended and told its licensees Section 2.01 means?

MR. GANT: Objection, vague, lack of
foundation, calls for speculation, for a legal 11:53 AM
conclusion.

MR. KAO: You can answer.

A. It means that any source code developed
by the licensee, originated by the licensee, is the
property of the licensee. They own that source code, 11:53 AM
and AT&T makes no claim of ownership in that source
code.

MR. GANT: Could you read back the
question and the answer please.

(REPORTER READ BACK.) 11:54 AM

MR. KAO: Was it the case then from
AT&T Technologies' perspective that the licensee
could do whatever it wanted with the source code that
it developed?

MR. GANT: Objection, vague, leading, 11:54 AM
foundation, calls for speculation and a legal
conclusion. Compound.

A. Yes.

MR. KAO: You can answer.
And again, just so I'm clear, is it 11:54 AM

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11:51 AM

Do you recognize this software
agreement?

A. I recognize the software agreement,
yes.

Q. Did you have any involvement, 11:51 AM
personally in negotiating the software agreement
between AT&T and the Santa Cruz operation?

A. Yes.

Q. Looking at Section 2.01 of this
agreement, which is on page two. 11:52 AM

A. Yes.

Q. Is that the Section 2.01 that you
discuss in paragraph 22 of your Declaration?

A. Yes, it is. I'm sorry.

MR. GANT: Vague and leading. 11:52 AM

MR. KAO: I guess just for the record.

A. Yes.

Q. Okay. Is it your understanding that
this Section 2.01, the language that appears in this
Section 2.01 in the Santa Cruz Agreement is the new 11:52 AM
language that AT&T developed and that is discussed in
the Dollar Echo newsletters?

MR. GANT: Objection, vague, leading,
lack of foundation.

A. Yes. 11:53 AM

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11:54 AM

your understanding well -- strike that. 11:54 AM

Do you understand Section 2.01 as it
appears in the Santa Cruz Agreement to be intended to
mean -- strike that.

Let me ask it in a clear way. 11:55 AM

Do you understand Section 2.01, as it
appears in the Santa Cruz Agreement, to mean anything
different than the Section 2.01 in the IBM agreement
that we looked at earlier?

MR. GANT: Objection, vague, leading, 11:55 AM
lack of foundation, calls for speculation and for a
legal conclusion.

A. There is no difference in meaning
between the two paragraphs.

MR. KAO: The same question with 11:55 AM
respect well -- strike that.

Do you believe there to be any
difference in meaning between Section 2.01 as it
appears in the Santa Cruz Agreement and Section 2.01
as it appears in the Sequent Agreement that we looked 11:55 AM
at earlier?

MR. GANT: Same objections.

A. No. There is no difference.

MR. KAO: Turning back to your
Declaration, can I ask you to read paragraph 23 into 11:56 AM

the record please.

11:56 AM

A. Although we noted in Dollar Echo that all Unix System V licensees could request specimen copies of the revised software agreement from the Software Sales and Licensing group, we did not require our licensees to enter into new agreements. We intended the revised language of Section 2.01, and other sections, to apply to all of our Unix System V licensees, including IBM and Sequent, regardless of which version of the standard software and sublicensing agreements that they had specifically entered into.

11:56 AM

Q. Are the sentences in paragraph 23 in your Declaration true?

11:56 AM

MR. GANT: Objection, leading, vague, compound, lack of foundation, calls for speculation and for a legal conclusion.

A. Yes. 11:57 AM

MR. KAO: With respect to the Unix System V licensees, that had earlier versions of the software agreement, did AT&T require any of those licensees to come back and execute a new agreement?

MR. GANT: Same objections. 11:57 AM

A. No. 11:57 AM

MR. KAO: Is it the case that AT&T Technologies intended for those licensees to have the benefits of any new language that was written by AT&T and put into subsequent software agreements?

11:57 AM

MR. GANT: Could you read it back please.

(REPORTER READ BACK.)

MR. GANT: Same objections.

MR. KAO: You can answer. 11:58 AM

A. Yes.

Q. Did you communicate that intent that well -- strike that.

Did you communicate to licensees that they did not have to enter into new agreements to obtain these benefits?

11:58 AM

MR. GANT: Same objections.

A. Yes.

MR. KAO: And how did you do that?

A. We told them specimen copies were available if, if my account executives were licensing people were told that if a licensee called, that they could receive a specimen copy and it would apply, the language in the new specimen copy. They, that in effect would be the new language of their agreement,

11:58 AM

1 although they did not have to sign that. 11:58 AM

2 Some licensees, for whatever reason,
3 wanted to sign a new agreement, and we upgraded their
4 agreement to the new language at no charge. It was
5 just a matter of signing the new agreement, providing
6 that to them. 11:59 AM

7 But we wanted everyone to know what the
8 changes were and they would have the benefit of that
9 language.

10 Q. Could you read back the question and
11 the answer please. 11:59 AM

(REPORTER READ BACK.)

MR. GANT: Thank you.

14 MR. KAO: Did a licensee have to
15 execute a new agreement to get the benefit of the
16 changes? 12:00 PM

A. No.

18 MR. GANT: Objection, foundation,
19 leading.

20 A. Sorry. No. 12:00 PM

21 MR. KAO: Turning back to your
22 Declaration, can I ask to you read paragraph 24 into
23 the record please?

24 A. Thus, whether or not AT&T Technologies
25 had provided a side letter to clarify the 12:00 PM

1 treatment of modifications or derivative 12:01 PM
2 works, or alter the language of Section
3 2.01 of the standard software agreement for
4 a specific Unix System V licensees, our
5 intent with respect to each licensee was 12:01 PM
6 the same. Excuse me. To my knowledge no
7 one at AT&T Technologies ever intended to
8 assert ownership or control over any
9 portions of a modification or derivative
10 work that did not contain our license Unix 12:01 PM
11 System V code. Our licensees, including
12 IBM and Sequent, were free to use and
13 disclose the modifications or derivative
14 works they created, provided that they did
15 not use and disclose any portion of the 12:01 PM
16 licensed Unix System V source code, except
17 as permitted by the license agreements.

18 Q. Are each of the sentences in paragraph
19 24 of your Declaration true?

20 MR. GANT: Objection, leading, vague, 12:01 PM
21 compound, lack of foundation, calls for speculation
22 and legal conclusions.

23 A. Yes.

24 MR. KAO: Can I ask you to read
25 paragraph 25 of your Declaration into the record? 12:02 PM

DAVID FRASURE

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1 A. In fact some of AT&T Technologies
2 licensees later developed technology that
3 AT&T Technologies wished to integrate into
4 the Unix System V software. We entered
5 into cooperative development agreements
6 with a number of these licensees because we
7 did not otherwise have rights to their
8 modification or derivative works or their
9 other stand-alone works. Indeed under the
10 license agreements we did not even have
11 copies of the modifications and derivative
12 works developed by our licensees in either
13 source or object code form.

14 Q. Are each of the sentences in paragraph
15 25 of your Declaration true? 12:02 PM

16 MR. GANT: Same objections.

17 A. Yes.

18 MR. KAO: Can you elaborate on what it
19 is you are discussing in paragraph 25 of your
20 Declaration? 12:03 PM

21 MR. GANT: Objection, vague.

22 A. Yes. Some of our licensees developed
23 features of Unix, perhaps routines that could be
24 executed that that were unique, had benefit to the
25 Unix operating system, and the outside of my 12:03 PM

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1 organization, there was a, up in New Jersey where our 12:03 PM
2 upper management was, our director level management,
3 they would negotiate -- which I did not have part
4 of -- but they did negotiate agreements with certain
5 licensees to take this developed code, and make it 12:03 PM
6 part of the Unix System V licensing agreement, and
7 then in turn our organization would license that code
8 to our licensees.

9 MR. KAO: And this was code that the
10 licensees created on their own; it was their own 12:04 PM
11 code?

12 A. That is correct.

13 MR. GANT: Could you read back the
14 Q and A?

15 (REPORTER READ BACK.) 12:04 PM

16 Q. Let me ask you if I could to read
17 paragraph 26 of your Declaration into the record.

18 A. It is my understanding that IBM's AIX
19 products and Sequent's Dynix products may
20 include some license Unix System V source 12:04 PM
21 code, but I do not know whether AIX and
22 Dynix are so similar to Unix System V that
23 they can be viewed as modifications of or
24 derivative works based on Unix System V.

25 In any event, as I understand the 12:04 PM

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12:05 PM

1 IBM Agreements and Sequent Agreements, IBM
2 and Sequent were and are free to use,
3 export, disclose or transfer any AIX and
4 Dynix source code, except for those
5 portions of AIX and Dynix code that contain
6 license Unix System V source code; unless
7 otherwise permitted by IBM Agreements or
8 the Sequent Agreements.

9 Q. Is each sentence in paragraph 26 of
10 your Declaration true, Mr. Frasure? 12:05 PM

11 MR. GANT: Objection, leading, vague,
12 compound, lack of foundation, calls for speculation
13 and a legal conclusion.

14 A. Yes.

15 MR. KAO: Can I ask you to read that 12:05 PM
16 paragraph 27 of your Declaration into the record?

17 A. I understand that plaintiff claims that
18 IBM and/or Sequent have breached -- there's
19 a typo -- have breached their licensed
20 agreements with AT&T Technologies, by 12:05 PM
21 improperly using, exporting, disclosing or
22 transferring AIX and Dynix source code,
23 irrespective of whether IBM and/or Sequent
24 have disclosed any specific protected
25 source code from Unix System V. 12:06 PM

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1 Any such claim is in my view 12:06 PM
2 inconsistent with the provisions of the
3 licensed agreements generally and the IBM
4 Agreements and Sequent Agreements in
5 particular. 12:06 PM

6 Q. Are each of the sentences in paragraph
7 27 true, Mr. Frasure?

8 MR. GANT: Objection, leading, vague,
9 compound, lack of foundation, calls for speculation
10 and for legal conclusions. 12:06 PM

11 A. As I understand them, the claims there,
12 they are true, yes.

13 MR. KAO: And just with respect to the
14 typo, to clarify for the record, in the second line
15 of paragraph 27 of your Declaration, should that -- 12:07 PM
16 right now it says "breach the their license
17 agreements."

18 A. "The" should be removed.

19 Q. Okay. Can I ask you to read paragraph
20 28 into the record, Mr. Frasure? 12:07 PM

21 A. I do not believe that anyone at AT&T
22 Technologies intended our Unix System V
23 license agreements to be construed to
24 exercise control over original works of our
25 licensees. In all cases, as I understand 12:07 PM

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1 as an agent of AT&T was to enter into an agreement 04:11 PM
 2 which would put AT&T in a position better than it
 3 would have been if the agreement had never been
 4 entered into?

MR. KAO: Objection to form. 04:11 PM

MR. GANT: Am I right about that?

MR. SZYMANSKI: Same, same objection.

Essentially the same question.

(Interruption by reporter.)

Essentially the same question. 04:11 PM

11 A. I-- if we negotiate an agreement, and
 12 I'm -- forgive me here, I mean if we negotiated an
 13 agreement to license the software, and that agreement
 14 never was in place before, then yes AT&T would be in
 15 a better position because they had licensed that 04:11 PM
 16 software to a new licensee.

MR. GANT: Did you ever negotiate an
 18 agreement on behalf of AT&T which resulted in AT&T
 19 being worse off than it was before without the
 20 agreement? 04:12 PM

MR. KAO: Objection to form.

MR. SZYMANSKI: Object to the form of
 23 the question, vague, and ambiguous.

A. I can't say that I did, no.

MR. GANT: Would you ever have done so 04:12 PM

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1 that it is beneficial to both parties to enter into 04:13 PM
 2 license agreements?

MR. KAO: Objection to form.

MR. SZYMANSKI: Object to the form of
 5 the question. 04:13 PM

A. Yes.

MR. GANT: Mr. Frasure, do you
 8 understand the distinction between ownership of
 9 something and restrictions on the ability to use that
 10 something? 04:13 PM

MR. KAO: Objection to form.

A. Well, if that question pertains to this
 13 Unix System V Agreement --

MR. GANT: -- I'm asking a general
 15 question at this point. Would you like it read back? 04:13 PM

A. Yes.

(REPORTER READ BACK.)

MR. KAO: Renew my objection.

A. Yes.

MR. GANT: You acknowledge that 04:14 PM
 21 someone that owns something can contract away certain
 22 of its rights to use that property or material?

MR. KAO: Objection to form.

A. Yes.

MR. GANT: If you could turn back to 04:14 PM

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1 purposefully? 04:12 PM

MR. SZYMANSKI: Object to the form of
 3 the question.

MR. KAO: Objection to form.

MR. GANT: Was one of your -- was one 04:12 PM
 6 of your objectives in negotiating Unix License
 7 Agreements on behalf of AT&T to protect AT&T's
 8 proprietary material?

MR. KAO: Objection to form.

A. Yes. 04:12 PM

MR. GANT: Can you describe for me
 12 what your understanding of a license is?

A. Of a license?

Q. Yes.

A. It's a, it's an authority or permit to 04:12 PM
 16 do something.

Q. Is it a common business practice for
 18 companies to enter into licensing agreements?

MR. SZYMANSKI: Object to the form of
 20 the question. 04:13 PM

MR. KAO: Objection to form.

MR. GANT: In your experience?

A. My experience both with AT&T and
 24 outside of AT&T, yes.

Q. And is it your experience and opinion 04:13 PM

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1 your affidavit, I'm sorry your Declaration we're 04:14 PM
 2 calling it. Look at page four, paragraph 11 please.

A. Yes.

Q. There's a reference in the first line
 4 to it, "Standard Software Agreement" and that term 04:14 PM
 6 appears elsewhere. I assume from your testimony in
 7 your Declaration that AT&T had multiple versions of
 8 its Unix License Agreements, correct?

A. Yes.

Q. And one set of versions you're 04:15 PM
 11 describing as the standard software agreement; is
 12 that right?

A. If it pertains -- if your question
 14 pertains to Unix System V, there was a standard
 15 software licensing agreement, and it was a printed 04:15 PM
 16 form as has been attached here; and that software
 17 agreement did evolve with changes to terminology.
 18 But the standard software agreement was this printed
 19 form, and any changes that were to be clarified,
 20 anything that was to be clarified or other grants 04:15 PM
 21 right were done in side letter, so you would, you
 22 could have the two side by side which then formed the
 23 agreement. But the standard software agreement, that
 24 terminology is the pre-printed form that was for Unix
 25 System V at that particular point in time. 04:16 PM

DAVID FRASURE

<p style="text-align: right;">Page 189</p> <p>1 Q. AT&T used a standard software 04:16 PM</p> <p>2 agreement, and in some instances supplemented or</p> <p>3 amended that standard agreement with the addition of</p> <p>4 a side letter; is that right?</p> <p>5 MR. KAO: Objection to form -- sorry. 04:16 PM</p> <p>6 Objection to form.</p> <p>7 MR. SZYMANSKI: I'll join that</p> <p>8 objection. Go ahead.</p> <p>9 A. For Unix System V, that is correct.</p> <p>10 MR. GANT: And is one example of a 04:16 PM</p> <p>11 standard agreement that was amended or supplemented</p> <p>12 the agreement with IBM which is reflected at Tabs 1</p> <p>13 and 4 of Exhibit 1?</p> <p>14 MR. KAO: Objection to form.</p> <p>15 A. That is correct. 04:16 PM</p> <p>16 MR. GANT: And is an example of a Unix</p> <p>17 License Agreement whereby there was no</p> <p>18 supplementation or amendment through a side letter</p> <p>19 the agreement between AT&T and Sequent which is</p> <p>20 behind Tab 5 of Exhibit 1? 04:17 PM</p> <p>21 MR. KAO: Objection to form.</p> <p>22 A. That is correct.</p> <p>23 MR. GANT: Can you turn to page six of</p> <p>24 your Declaration at Exhibit 1.</p> <p>25 There are three lines and there's a 04:18 PM</p>	<p style="text-align: right;">Page 191</p> <p>1 2.01 meant? 04:19 PM</p> <p>2 A. There were a lot of new licensees when</p> <p>3 it came to Unix System V. Unix I think traditionally</p> <p>4 had been a system that was provided to universities,</p> <p>5 licensed to universities and to the government. It 04:20 PM</p> <p>6 was a very powerful operating system, extremely fast,</p> <p>7 able to do certain type of calculations and analysis</p> <p>8 and so on had the ability to do that.</p> <p>9 Prior to my entering the software</p> <p>10 licensing organization, Unix, the management made a 04:20 PM</p> <p>11 business decision to try to commercialize Unix, and</p> <p>12 as a result they come up with this standard software</p> <p>13 agreement with specific terms and conditions in it,</p> <p>14 and because the number of people that were coming on</p> <p>15 as first-time licensees, they are wanting to gain an 04:21 PM</p> <p>16 understanding of exactly what this language meant.</p> <p>17 And --</p> <p>18 Q. -- I'm sorry.</p> <p>19 A. And therefore clarifications were</p> <p>20 provided. 04:21 PM</p> <p>21 Q. And one, one of the provisions in the</p> <p>22 standard software agreement that new licensees had</p> <p>23 questions about was Section 2.01; is that right?</p> <p>24 A. That is correct.</p> <p>25 Q. And the nature of the questions were 04:21 PM</p>
<p style="text-align: right;">Page 190</p> <p>1 block quote and then there's text which begins: "As 04:18 PM</p> <p>2 we assured our licensees..." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Can you explain to me what you're</p> <p>5 referring to when you talked about giving assurances 04:18 PM</p> <p>6 to AT&T's licensees?</p> <p>7 A. Well, I think the line, the sentence</p> <p>8 speaks for itself.</p> <p>9 MR. GANT: I'm sorry I didn't mean to</p> <p>10 interrupt you, but let me try and make my question 04:18 PM</p> <p>11 clearer.</p> <p>12 I'm trying to understand why it was</p> <p>13 that AT&T was giving what I presume were verbal, oral</p> <p>14 assurances to its licensees about the meaning of</p> <p>15 Section 2.01? Can you explain that to me? 04:19 PM</p> <p>16 A. Well, there was just questions that</p> <p>17 would pretty much on a regular basis come up about</p> <p>18 the ownership of the derivative works or</p> <p>19 modifications, and what we were trying to do was to</p> <p>20 just further define that and to ensure the licensees 04:19 PM</p> <p>21 that AT&T was not trying to take ownership in any of</p> <p>22 the work that they put in to providing their</p> <p>23 derivative works of Unix System V.</p> <p>24 Q. These questions were arising because</p> <p>25 licensees were unsure what the language contained in 04:19 PM</p>	<p style="text-align: right;">Page 192</p> <p>1 that the new licensees didn't understand from the 04:21 PM</p> <p>2 language of 2.01 by itself what the agreement</p> <p>3 entailed?</p> <p>4 MR. KAO: Objection to form.</p> <p>5 A. They just wanted a further explanation 04:21 PM</p> <p>6 of I believe of AT&T had no ownership claim in the</p> <p>7 original works that they, they provided.</p> <p>8 MR. GANT: Is it your understanding</p> <p>9 that was because looking at the language of 2.01</p> <p>10 itself they still had questions about what it meant? 04:21 PM</p> <p>11 A. Yes.</p> <p>12 Q. And the questions related at least in</p> <p>13 part to what the meaning of a derivative work and a</p> <p>14 modified work were; is that right?</p> <p>15 MR. KAO: Objection to form. 04:22 PM</p> <p>16 A. What they meant?</p> <p>17 MR. GANT: Yes, or encompassed?</p> <p>18 MR. KAO: Restate my objection.</p> <p>19 MR. GANT: I'll withdraw the question.</p> <p>20 MR. SZYMANSKI: He's withdrawing the 04:22 PM</p> <p>21 question.</p> <p>22 A. Okay.</p> <p>23 MR. GANT: Chris is very persuasive.</p> <p>24 Is it your understanding, Mr. Frasure,</p> <p>25 that if code was either derivative work or a 04:22 PM</p>