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**In The Matter Of:**

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

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**OTIS L. WILSON**

***June 10, 2004***

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**WILSON, OTIS L.**



1  
2 IN THE UNITED STATES DISTRICT COURT  
3 DISTRICT OF UTAH  
4 Case No.: 2:03-CV-0294  
5 THE SCO GROUP, INC., )  
6 A DELAWARE CORPORATION )  
7 Plaintiff, )  
8 -vs- )  
9 INTERNATIONAL BUSINESS MACHINES )  
10 CORPORATION, A NEW YORK CORPORATION, )  
11 Defendant. )  
12  
13  
14 Videotaped Deposition of Otis L. Wilson,  
15 (Taken by Defendant)  
16 Greensboro, North Carolina  
17 Thursday, June 10, 2004  
18  
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22  
23  
24 Reported in Stenotype by  
25 Lisa A. DeGroat, Registered Professional Reporter  
Transcript produced by computer-aided transcription

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25 ALSO PRESENT: Jason Zoladz  
Carolyn Badertscher  
John Ghose  
VIDEOGRAPHER: Staples N. Kute, CLVS  
  
VIDEOTAPED DEPOSITION OF OTIS L. WILSON, a  
witness called on behalf of Defendant, before  
Lisa A. DeGroat, RPR, Notary Public, in and for the  
State of North Carolina, at the O. Henry Hotel,  
624 Green Valley Road, Greensboro, North Carolina,  
on Thursday, June 10, 2004, commencing at 9:27 a.m.

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1 (DEPOSITION EXHIBIT NUMBERS 75, 76, 77  
2 AND 78 WERE MARKED FOR IDENTIFICATION)  
3 THE VIDEOGRAPHER: Here begins  
4 videotape number one in the deposition of Otis L.  
5 Wilson, in the matter of The SCO Group,  
6 Incorporated versus IBM Corporation, in the  
7 United States District Court, District of Utah.  
8 The case number is 2:03CV-0294.  
9 Today's date is June 10th, 2004. The time on the  
10 video monitor is 9:28 a.m. The video operator  
11 today is Staples Kute, CLVS. This video deposition  
12 is taking place at the O. Henry Hotel, in  
13 Greensboro, North Carolina.  
14 Counsel, please, voice identify yourselves  
15 and state whom you represent.  
16 MR. MARRIOTT: David Marriott, of Cravath,  
17 Swaine & Moore, for the witness and for  
18 International Business -- Business Machines  
19 Corporation.  
20 MR. ZOLADZ: Jason Zoladz, of Cravath,  
21 Swaine & Moore, for IBM.  
22 MS. BADERTSCHER: Carrie Badertscher,  
23 Cravath, Swaine & Moore, for IBM.  
24 MR. GHOSE: John Ghose, Cravath, Swaine &  
25 Moore.

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1 MR. GANT: Scott Gant, from Boies,  
2 Schiller & Flexner, for the SCO Group.  
3 MR. NOTO: Aldo Noto, from Andrews Kurth,  
4 L.L.P., for the SCO Group.  
5 MR. DAVIS: Steve Davis, Boies, Schiller &  
6 Flexner, for the SCO Group.  
7 THE VIDEOGRAPHER: Thank you.  
8 The court reporter today is Lisa DeGroat  
9 of Russell Court Reporting.  
10 Would the reporter, please, swear in the  
11 witness.  
12 OTIS L. WILSON,  
13 having first been duly sworn, was examined and did  
14 testify as follows:  
15 \* \* \*  
16 THE VIDEOGRAPHER: You may begin.  
17 MR. MARRIOTT: Why don't we just say at  
18 the outset a couple of things. First, is that  
19 Mr. Wilson is here pursuant to a subpoena, and we  
20 will -- we've marked that subpoena as an exhibit to  
21 the deposition. It's Exhibit Number 77.  
22 Mr. Wilson has indicated to me that he is  
23 amenable to being deposed for seven hours, allotted  
24 by the -- the rules, and doesn't wish to be deposed  
25 for longer than that.

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1 Counsel discussed before the deposition  
2 the ways in which we might allocate time, and we  
3 did not reach, I believe, a firm agreement, but it  
4 was at least proposed that we each contemplate  
5 taking somewhere in the order of 3.5 hours, and  
6 then if a party feels they -- they require more  
7 time, that's something they would take up with the  
8 appropriate court.  
9 So I think our agreement, and you can tell  
10 me if I've got it right, Counsel, is that we'll  
11 each endeavor to be finished within -- within, say,  
12 our 3.5 hours, and --  
13 MR. GANT: We will each endeavor to  
14 roughly take that much time. We will endeavor not  
15 to take more of Mr. Wilson's time than necessary.  
16 And I don't anticipate that we'll have problems  
17 doing that, but that we can address the issue  
18 amongst ourselves or with the court, if necessary,  
19 if either party thinks they need more time.  
20 MR. MARRIOTT: Okay. Thank you.  
21 As I think you know, we, at Cravath,  
22 represent, not only IBM, but also Mr. Wilson. And  
23 I've provided for you as an exhibit a copy of the  
24 retention letter that exists between Mr. Wilson and  
25 Cravath. That's Exhibit 78.

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1 And I point this out, merely to say that  
2 Mr. Wilson retained us in or about the 6th of May  
3 2004. So any communications that we had with  
4 Mr. Wilson before then, so far as we're concerned,  
5 are fair game for inquiry.  
6 Communications after the time in which we  
7 began to represent him become a bit more  
8 problematic, and we can confront those when we --  
9 when we do.  
10 Mr. Wilson has -- has, as you know, I  
11 believe, Counsel, provided two sworn statements for  
12 litigation, and I want to just say for the record  
13 that those have been provided to you as -- not only  
14 this morning before the deposition, but as -- as  
15 required, as I understand it, by Magistrate Judge  
16 Wells in advance of the deposition.  
17 MR. GANT: And I'll confirm that we  
18 received those at approximately 11:00 p.m. this  
19 past Tuesday. And, although, I don't think anyone  
20 has an interest in re-arguing any of the issues  
21 related to that, I just want to note for the record  
22 SCO's objection, which we registered at the time of  
23 the deposition, which occurred this past Tuesday,  
24 where this issue first surfaced, that we do not  
25 believe that we were given an adequate opportunity

1 to review declarations that were executed by third  
2 parties, and that it has prejudiced our ability to  
3 properly examine the witnesses, and these documents  
4 should have been produced earlier, and we will  
5 reserve all rights and the opportunity to request  
6 appropriate relief from the court on this issue.

7 MR. MARRIOTT: Okay. Well, I appreciate  
8 your position, and, as I think you know, disagree  
9 with it, but let me ask you a question, however.  
10 Is it your position that -- that any third party's  
11 sworn statement is required to have -- to have been  
12 produced and should have been produced in the  
13 litigation?

14 MR. GANT: I'll -- I'll answer your  
15 question briefly. Although, in the interest of not  
16 wasting Mr. Wilson's time, I suggest we not spend  
17 too much time on this, but I don't want to --

18 MR. MARRIOTT: Sure.

19 MR. GANT: -- be nonresponsive. I will  
20 focus my response on the declarations that have  
21 been used in depositions that were not given to us.  
22 And it's our position that they should have been  
23 provided to us earlier, and, obviously, the court  
24 will make any determinations about that issue.

25 MR. MARRIOTT: Okay. Well, just to be

1 clear, no -- no affidavits have been used in any  
2 deposition that you didn't have in advance of the  
3 deposition; correct?

4 MR. GANT: That is incorrect.

5 MR. MARRIOTT: Well, I don't want to argue  
6 with you about the Frasure deposition, but were you  
7 not given a copy of Mr. Frasure's declarations  
8 before the examination began?

9 MR. GANT: No.

10 MR. MARRIOTT: You were given a copy  
11 during the examination?

12 MR. GANT: Correct.

13 MR. MARRIOTT: And then took a break for  
14 an hour to review the declarations?

15 MR. GANT: I don't remember exactly how --  
16 when the break was.

17 MR. MARRIOTT: All right. I think we're  
18 probably wasting time.

19 Mr. -- and, of course, on behalf of  
20 Mr. Wilson, we'd like to reserve the right to -- to  
21 have him review it and read the transcript.

22 DIRECT EXAMINATION

23 BY MR. MARRIOTT:

24 Q. Mr. Wilson, would you state your name,  
25 please, and spell it for the -- for the record?

1 A. It's Otis L. Wilson, O-T-I-S, middle  
2 initial, L, W-I-L-S-O-N.

3 Q. What is your current address, Mr. Wilson?

4 A. 5 Round Hill Court, in Greensboro,  
5 North Carolina.

6 Q. Are you presently employed?

7 A. I'm retired. I do quite a bit of  
8 community work, and I'm heavily involved with  
9 our -- with my church, and spend quite a bit of  
10 time over there, as well as other civic things that  
11 I do.

12 Q. Could you just briefly describe the  
13 community work that you do, please?

14 A. I work with United Way on the area of  
15 preparing children to succeed. It's about a  
16 \$5,000,000 annual budget for programs and agencies  
17 that participate in activities that prepare  
18 children to succeed in school, and I do quite a bit  
19 of work in diversity training in the community.

20 Q. How long have you been involved with  
21 United Way?

22 A. Oh, probably 30 years.

23 Q. And what is it that you do with respect to  
24 diversity training?

25 A. We actually bring different groups of

1 folks together and deal with issues of race, sex,  
2 the different isms, to try to promote better  
3 understanding among all people.

4 Q. And, please, describe, if you would, just  
5 generally, the nature of your work with the church?

6 A. At the church I'm the minister of  
7 facilities. I'm responsible for the -- all of the  
8 physical plant associated with our church. We have  
9 a fairly large church, about 5,000 members, and I  
10 kind of oversee those different locations with  
11 regard to the disciplined support required for the  
12 ministries.

13 Q. Were you previously employed by AT&T,  
14 Mr. Wilson?

15 A. Yes.

16 Q. For how long were you employed by AT&T?

17 A. Right about 30 years.

18 Q. And during what specific 30-year period,  
19 if you recall?

20 A. From 1963 through early '90-'91.

21 Q. And what positions, if you could just  
22 briefly summarize them, did you hold while employed  
23 by AT&T?

24 A. They vary from repair operations,  
25 distribution. Some -- actually, training, and for

<p style="text-align: right;">Page 13</p> <p>1 the last several years I was involved with  2 intellectual property licensing.  3 Q. And when you say you were involved with  4 intellectual property licensing, with what  5 intellectual property were you involved?  6 A. My main focus was in the area of computer  7 software.  8 Q. Were you responsible for any particular  9 type of computer software?  10 A. Yes. I was responsible for the licensing  11 worldwide of the -- of the operating system  12 software and associated programs in with it.  13 Q. Okay. And which operating system software  14 are you referring to?  15 A. The most popular name would be UNIX  16 software, and there were several, but probably the  17 most popular one was UNIX System V, its  18 predecessors and those that came after it.  19 Q. Did you have responsibility for all of  20 AT&amp;T's UNIX licensing?  21 MR. GANT: Objection. Vague, leading.  22 Q. You can answer.  23 A. Yes. My organization was responsible for  24 licensing of the software worldwide.  25 Q. Did you have any responsibility for AT&amp;T's</p>	<p style="text-align: right;">Page 15</p> <p>1 with respect to UNIX?  2 MR. GANT: Objection. Vague, foundation,  3 calls for speculation.  4 Q. You can answer.  5 A. Would you restate the question?  6 MR. MARRIOTT: Could you just read it back  7 for the witness, please.  8 (PREVIOUS QUESTION THEN READ)  9 MR. GANT: Same objections.  10 THE WITNESS: Yes. As I understand the  11 question, we were -- our licensing program was --  12 was -- was designed to provide software to  13 licensees under protective clauses, which are  14 contained in those agreements. Mainly for their  15 internal use.  16 BY MR. MARRIOTT:  17 Q. Do you have --  18 MR. GANT: Motion to strike as  19 nonresponsive.  20 Q. Do you have personal knowledge of AT&amp;T's  21 licensing agreements between IBM and AT&amp;T regarding  22 UNIX?  23 MR. GANT: Objection. Vague, foundation.  24 MR. MARRIOTT: Do you want to just have a  25 continuing objection to every question?</p>
<p style="text-align: right;">Page 14</p> <p>1 licensing of UNIX to IBM?  2 A. Yes.  3 Q. Did you have any responsibility for AT&amp;T's  4 licensing of UNIX to Sequent?  5 MR. GANT: Objection. Vague.  6 Q. You can answer.  7 A. Yes.  8 Q. Are you familiar with AT&amp;T's licensing  9 agreements regarding UNIX?  10 MR. GANT: Objection. Vague.  11 THE WITNESS: Yes. I'm familiar with  12 those agreements.  13 BY MR. MARRIOTT:  14 Q. How did you -- how did you come to be  15 familiar with those agreements, Mr. Wilson?  16 MR. GANT: Same objection.  17 THE WITNESS: Those agreements were --  18 were provided for my organization to the -- to our  19 licensees, with Sequent and IBM being two of those  20 companies that licensed the software from AT&amp;T. So  21 I was responsible for preparing and negotiating  22 those licenses.  23 BY MR. MARRIOTT:  24 Q. Do you have personal knowledge as to what  25 AT&amp;T intended regarding its licensing agreements</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. GANT: No. Thank you.  2 MR. MARRIOTT: Okay. Do you want the  3 question read back? I think there may be a little  4 confusion as to what it is. So if you could read  5 back the question, I think it might help the  6 witness.  7 (PREVIOUS QUESTION THEN READ)  8 MR. GANT: Same objections.  9 THE WITNESS: Yes.  10 BY MR. MARRIOTT:  11 Q. Could you generally describe, please,  12 Mr. Wilson, the rights granted by AT&amp;T's UNIX  13 licensing agreements?  14 MR. GANT: Objection. Vague and compound.  15 THE WITNESS: The UNIX software  16 agreements -- this is a little confusing, going  17 back and forth here, but the UNIX software  18 agreements provided rights to our licensees to use  19 the software to develop modification and derivative  20 works to use for their internal business purposes.  21 BY MR. MARRIOTT:  22 Q. Was that, "modifications and derivative  23 works," or, "modifications of derivative works"?  24 A. "And."  25 MR. GANT: Could -- could you read back</p>

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1 that Q and A, please.  
 2 (REQUESTED PORTION OF THE RECORD READ)  
 3 BY MR. MARRIOTT:  
 4 Q. Okay. Let me try that again, Mr. Wilson.  
 5 I think the exchange confused the -- the colloquy.  
 6 Do you -- could you, please, generally  
 7 describe the rights granted by AT&T's UNIX  
 8 licensing agreements?  
 9 MR. GANT: Objection. Vague, compound,  
 10 foundation, calls for speculation and legal  
 11 conclusions.  
 12 MR. MARRIOTT: You may answer the  
 13 question.  
 14 THE WITNESS: Okay. You've got two  
 15 questions. Would you read it back again?  
 16 (PREVIOUS QUESTION THEN READ)  
 17 MR. GANT: Same objections.  
 18 MR. MARRIOTT: Okay. Let me just -- as an  
 19 aside, I don't -- maybe we can just agree that you  
 20 don't have to say, same objections. She doesn't  
 21 retype the question when she reads it, and so --  
 22 MR. GANT: That's fine. Then don't --  
 23 MR. MARRIOTT: She's not saying it.  
 24 MR. GANT: True.  
 25 MR. MARRIOTT: So I just think its going

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1 to further confuse the witness. And I'll endeavor  
 2 to do the same, if you have questions, but --  
 3 MR. GANT: Sure. As long as you'll  
 4 stipulate to that, that's fine.  
 5 MR. MARRIOTT: I think they're on the --  
 6 they're on the record.  
 7 So I think we -- now I've further probably  
 8 confused the matter. So can you just read the  
 9 question one more time, and then we'll let the  
 10 witness answer it.  
 11 (PREVIOUS QUESTION THEN READ)  
 12 THE WITNESS: Basically the rights granted  
 13 was for the licensee to use the software under  
 14 this -- under -- under the stipulations in the  
 15 agreement for their internal business purposes. So  
 16 they could use it within their own company or their  
 17 licensing areas.  
 18 BY MR. MARRIOTT:  
 19 Q. Did the agreements allow licensees to  
 20 prepare modifications and derivative works of the  
 21 software product subject to the licensing  
 22 agreements?  
 23 MR. GANT: Objection. Foundation,  
 24 calls --  
 25 THE WITNESS: Yes, it did.

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1 MR. GANT: I'm sorry. I was waiting for  
 2 the cough.  
 3 Foundation, calls for speculation and  
 4 legal conclusions.  
 5 THE WITNESS: Yes, they do.  
 6 BY MR. MARRIOTT:  
 7 Q. Could -- did the agreements place any  
 8 restrictions on the licensees, Mr. Wilson?  
 9 MR. GANT: Objection. Vague, foundation,  
 10 calls for speculation and legal conclusions.  
 11 THE WITNESS: Yes. There were -- there  
 12 were specific granted rights in the agreements with  
 13 restrictions with what you could do and what you  
 14 could not do.  
 15 BY MR. MARRIOTT:  
 16 Q. Could you just generally, please, describe  
 17 the restrictions the agreements placed on  
 18 licensees?  
 19 MR. GANT: Same objections.  
 20 THE WITNESS: The primary was that they  
 21 could use -- they could use the software products,  
 22 but not disclose the software products.  
 23 BY MR. MARRIOTT:  
 24 Q. Did the agreements place any restrictions  
 25 on what licensees could do with modifications or

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1 derivative works of the software product?  
 2 MR. GANT: Objection. Vague, foundation,  
 3 calls for speculation and legal conclusions.  
 4 THE WITNESS: The -- the restrictive  
 5 covenant of the licensing agreements only pertained  
 6 to that portion of the software product originally  
 7 supplied to our licensees.  
 8 And so any -- any derivative or  
 9 modification of work that they produced that  
 10 contained parts of the software product that they  
 11 were licensed for had to be protected under the  
 12 same covenants of the software licensing agreement.  
 13 BY MR. MARRIOTT:  
 14 Q. Did -- did AT&T, as you understand it,  
 15 Mr. Wilson, intend its licensing agreements to  
 16 protect anything other than the software product,  
 17 as that term is defined in the AT&T, UNIX licensing  
 18 agreements?  
 19 MR. GANT: Objection. Leading, vague,  
 20 foundation, calls for speculation and legal  
 21 conclusions.  
 22 THE WITNESS: We did not.  
 23 BY MR. MARRIOTT:  
 24 Q. Did AT&T intend its UNIX licensing  
 25 agreements to place restrictions on the extent to

1 which its licensees could use, distribute, disclose  
2 or transfer modifications and derivative works of  
3 the software product independent of any software  
4 product included in the modification or derivative  
5 work?  
6 MR. GANT: Same objections and also  
7 compound.  
8 THE WITNESS: We did not.  
9 (DISCUSSION OFF THE RECORD)  
10 BY MR. MARRIOTT:  
11 Q. Are you familiar, Mr. Wilson, with the  
12 term methods and concepts?  
13 A. Yes, I am.  
14 Q. And what -- what does that mean to you,  
15 sir?  
16 A. Methods and concepts was a -- a clause  
17 that we used in our software agreement to protect  
18 the originality of the ideas and concepts embodied  
19 in that particular software product or work.  
20 Q. And what -- what very precisely does that  
21 mean, Mr. Wilson?  
22 MR. GANT: Objection. Vague.  
23 THE WITNESS: It evolved over time. When  
24 we first started licensing software products, it --  
25 it pretty much pertained to the UNIX operating

1 system, which at the time was fairly new in the  
2 industry.  
3 It was a new concept of how to license  
4 operating systems for computers, and so any methods  
5 and concepts associated with that was what that was  
6 doing. Later on we -- we abandoned it.  
7 Q. Are you familiar with the terms of AT&T's  
8 licensing agreements with IBM concerning methods  
9 and concepts?  
10 MR. GANT: Objection. Vague, lack of  
11 foundation.  
12 THE WITNESS: Yes, I am.  
13 BY MR. MARRIOTT:  
14 Q. And could you describe that, please, sir?  
15 MR. GANT: Same objections.  
16 THE WITNESS: As I mentioned earlier,  
17 the -- the methods and concepts was in our earlier  
18 agreements, and -- and through negotiations with  
19 IBM, we later removed that particular clause.  
20 Mainly because the -- because time had  
21 passed, and the -- pretty much the methods and  
22 concepts associated with those software products  
23 were pretty well -- pretty much widely known. So  
24 it wasn't really necessary to be there.  
25 MR. GANT: I -- I couldn't understand the

1 last part of what you said. I assume you got it.  
2 So, if you could, read it back, please.  
3 (PREVIOUS ANSWER THEN READ)  
4 MR. GANT: Thank you.  
5 And if I could just ask you to speak up a  
6 tad. I'm having a little trouble hearing you.  
7 THE WITNESS: Okay.  
8 MR. GANT: Thank you.  
9 BY MR. MARRIOTT:  
10 Q. Are you familiar with the concept of the  
11 software product that products -- withdrawn.  
12 Are you familiar with the concept of the  
13 software products covered by the AT&T, UNIX  
14 licensing -- licensing agreements becoming  
15 available without restriction to the general  
16 public?  
17 MR. GANT: Objection. Vague, leading.  
18 THE WITNESS: Yes. There was -- there was  
19 concern expressed by several licensees, and the  
20 program itself, about inadvertent disclosure of  
21 software, and would the licensee be held liable for  
22 that particular act.  
23 And we -- we assured our licensees that  
24 they would not be responsible for the protection of  
25 software, which was made publicly available,

1 without any act attributable to them personally or  
2 directly.  
3 BY MR. MARRIOTT:  
4 Q. Have you provided sworn statements  
5 concerning your understanding of the AT&T, UNIX  
6 licensing agreements, Mr. Wilson?  
7 MR. GANT: Objection. Vague.  
8 THE WITNESS: The -- the declarations that  
9 we have here today? I --  
10 BY MR. MARRIOTT:  
11 Q. Have you provided those?  
12 A. Yes, I have.  
13 Q. Let me show the witness what has  
14 previously been marked as Exhibit 75, which is the  
15 declaration of Otis L. Wilson, dated December 11th,  
16 2003. Copies have previously been provided to  
17 counsel.  
18 I wish also to show you, Mr. Wilson, a  
19 copy of -- well, Exhibit 76, which is the  
20 declaration of Otis L. Wilson, dated April 26,  
21 2004. A copy of which has also been provided to  
22 counsel.  
23 MR. GANT: And, just for the record, these  
24 exhibits contain declarations, as well as  
25 attachments to the declarations.



1 MR. MARRIOTT: Thank you. That is  
2 correct. Thank you for the clarification.  
3 BY MR. MARRIOTT:  
4 Q. Are Exhibits 75 and 76 copies of the sworn  
5 statements that you have provided concerning your  
6 understanding of AT&T's licensing agreements  
7 concerning UNIX, Mr. Wilson?  
8 A. Not going through in complete detail of  
9 what I was just handed, I believe it to be so. I  
10 think these are true documents. Sorry.  
11 Do you want me to read them?  
12 MR. GANT: It's Mr. Marriott's  
13 examination.  
14 MR. MARRIOTT: If you -- if you feel you  
15 need to read them -- I do intend to walk you  
16 through them. If you feel you need to read them to  
17 answer the question of whether those are yours, by  
18 all means, please, do.  
19 THE WITNESS: They appear to be. Yes,  
20 they do.  
21 BY MR. MARRIOTT:  
22 Q. Would you take a look, please, Mr. Wilson,  
23 at the signature page of Exhibit 75, which is your  
24 declaration, dated December 11, 2003, and direct  
25 your attention to the middle of the page, please,

1 sir?  
2 A. Uh-huh.  
3 Q. Is that, in fact, your signature,  
4 Mr. Wilson?  
5 A. Yes, it is.  
6 MR. GANT: Just -- I know exactly what you  
7 mean, but you're referring to the signature page of  
8 the exhibit. And this is the declaration at the  
9 front of the exhibit, because there are other  
10 signatures, I think perhaps even his signature, and  
11 other signature pages in the exhibit. So --  
12 MR. MARRIOTT: Fair enough. Let me --  
13 MR. GANT: I'm not trying to make it  
14 difficult. I just want a clear record.  
15 MR. MARRIOTT: I'm happy for the  
16 clarification. Let me try to -- let me try to be a  
17 little bit more clear in my question, Mr. Wilson.  
18 BY MR. MARRIOTT:  
19 Q. Exhibit 75 is a copy of a sworn  
20 declaration that you provided in this litigation,  
21 to which are appended nine exhibits; is that right?  
22 A. That's correct.  
23 Q. And Exhibit Number 76 is, similarly, a  
24 copy of a sworn -- of a sworn declaration that you  
25 provided in litigation, to which are appended ten

1 exhibits; is that right?  
2 A. Yes, it is.  
3 Q. Okay. Let me now, if I may, direct your  
4 attention, Mr. Wilson, to the signature page of the  
5 declaration portion of Exhibit 75, and ask you  
6 whether your signature appears at page 20 of  
7 Exhibit 75? Page 20 of the declaration, not the  
8 attachments?  
9 THE VIDEOGRAPHER: I'm sorry to interrupt,  
10 but you're obscuring the question with that. Thank  
11 you.  
12 THE WITNESS: Yes, it is.  
13 (DISCUSSION OFF THE RECORD)  
14 THE WITNESS: Yes, it is.  
15 BY MR. MARRIOTT:  
16 Q. Would you take a look, please, Mr. Wilson,  
17 at the declaration that appears at Exhibit 76? And  
18 that's at page 13 of the declaration, not the  
19 attachments.  
20 A. Uh-huh.  
21 Q. Does your signature appear at page 13 of  
22 the declaration portion of Exhibit 76?  
23 A. Yes, it does.  
24 Q. Is it agreeable, Mr. Wilson, during the  
25 course of the deposition that when I refer to your

1 declaration in Exhibit 75, you'll understand I'm  
2 talking about -- withdrawn.  
3 Is it agreeable that when I refer to  
4 Exhibit 75 and the pages of Exhibit 75, you'll  
5 understand I'm referring to the pages of the  
6 declaration itself, unless I specifically call your  
7 attention to the attachments to the declaration?  
8 A. (WITNESS NODS HEAD UP AND DOWN)  
9 Q. And, similarly, is it agreeable during the  
10 course of the deposition, Mr. Wilson, that when I  
11 refer to Exhibit 76 and the pages of Exhibit -- of  
12 Exhibit 76 that I'm referring to the pages of the  
13 declaration, not the attachments, unless I  
14 specifically call the attachments to your  
15 attention?  
16 A. Yes. I understand.  
17 Q. Did -- did you review Exhibit 75,  
18 Mr. Wilson, before you signed the declaration?  
19 A. Yes, I did.  
20 Q. Did you review Exhibit 76 before you  
21 signed the declaration that's part of that exhibit?  
22 A. Yes, I did.  
23 Q. Is the information provided in Exhibit 75  
24 true and correct, Mr. Wilson?  
25 MR. GANT: Objection. Leading, vague,

<p style="text-align: right;">Page 29</p> <p>1 compound.</p> <p>2 MR. MARRIOTT: Withdrawn.</p> <p>3 BY MR. MARRIOTT:</p> <p>4 Q. Is the information provided in Exhibit --</p> <p>5 Exhibit 76 correct, Mr. Wilson?</p> <p>6 MR. GANT: Objection. Compound.</p> <p>7 Q. You can answer, please?</p> <p>8 A. Yes.</p> <p>9 Q. Is the information provided in Exhibit --</p> <p>10 in Exhibit 75 correct?</p> <p>11 MR. GANT: Objection. Compound.</p> <p>12 THE WITNESS: To the best of my knowledge,</p> <p>13 yes.</p> <p>14 BY MR. MARRIOTT:</p> <p>15 Q. Is there anything about the content of the</p> <p>16 declaration found in Exhibit 75 that you would</p> <p>17 change?</p> <p>18 A. I missed a typo on one of them the first</p> <p>19 time I went through, and I picked it up as I was</p> <p>20 looking again. On page five of the Exhibit 70 --</p> <p>21 76, I guess it is.</p> <p>22 Q. Is it --</p> <p>23 A. It refers on page five to paragraph 4.03.</p> <p>24 Section 4.03 should really read section 4.01.</p> <p>25 Q. Is there anything else about Exhibit 76</p>	<p style="text-align: right;">Page 31</p> <p>1 sublicensing agreement between International</p> <p>2 Business Machines Corporation and AT&amp;T</p> <p>3 Technologies, and it was executed by Dave Frasure,</p> <p>4 in 1985, on my behalf.</p> <p>5 Q. May I direct your attention to tab three,</p> <p>6 please? Would you tell me what that is?</p> <p>7 A. Tab three is a substitution agreement</p> <p>8 between IBM Corporation and AT&amp;T Technologies,</p> <p>9 executed by David Frasure on my behalf.</p> <p>10 Q. Would you take a look, please, at tab</p> <p>11 four, and tell me what that is?</p> <p>12 A. Tab four is a -- a letter for my</p> <p>13 signature, written to the IBM Corporation,</p> <p>14 referencing software agreements and the</p> <p>15 sublicensing agreement and the substitution</p> <p>16 agreement.</p> <p>17 Q. Would you take a look, please, at tab five</p> <p>18 and tell me what that is?</p> <p>19 A. Tab five is an AT&amp;T Technologies, Inc.</p> <p>20 software agreement between AT&amp;T Technologies and</p> <p>21 Sequent Systems, which was executed by myself.</p> <p>22 Q. And when was that executed, Mr. Wilson?</p> <p>23 A. That was executed in April of 1985.</p> <p>24 Q. Would you take a look, please, at tab six</p> <p>25 and tell me what that is?</p>
<p style="text-align: right;">Page 30</p> <p>1 that you would change?</p> <p>2 A. There is not.</p> <p>3 Q. Is there anything about Exhibit 75 that</p> <p>4 you would change?</p> <p>5 A. There is not.</p> <p>6 Q. Both exhibits are, to the best of your</p> <p>7 knowledge and understanding, true and correct?</p> <p>8 A. They are.</p> <p>9 Q. You stand by the statements in these -- in</p> <p>10 these declarations, sir?</p> <p>11 A. I do. Yes, I do.</p> <p>12 Q. Are you familiar, Mr. Wilson, with the</p> <p>13 documents appended to Exhibit 75?</p> <p>14 A. Yes.</p> <p>15 Q. Would you turn, please, to tab one of</p> <p>16 Exhibit 75 and tell me what that is?</p> <p>17 A. Tab one is a copy of a software agreement</p> <p>18 between AT&amp;T Technologies and the IBM Corporation.</p> <p>19 Q. And was Exhibit 1 signed on your behalf by</p> <p>20 David Frasure?</p> <p>21 A. Yes, it is.</p> <p>22 Q. Would you -- may I direct your attention,</p> <p>23 please, to tab two of Exhibit 75. Would you tell</p> <p>24 me what that is, sir?</p> <p>25 A. Tab two is an AT&amp;T Technologies</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Tab six is an AT&amp;T Technologies</p> <p>2 sublicensing agreement between Sequent Computer</p> <p>3 Systems, Incorporated and AT&amp;T, Incorporated,</p> <p>4 executed in January of 1986, executed by myself.</p> <p>5 Q. Would you take, please, a look at</p> <p>6 Exhibit 7 and tell me what that is?</p> <p>7 MR. GANT: Tab seven?</p> <p>8 MR. MARRIOTT: Tab seven. Thank you.</p> <p>9 THE WITNESS: Tab seven is a substitution</p> <p>10 agreement between AT&amp;T Technologies and Sequent</p> <p>11 Computer Systems, Incorporated, executed in 1986</p> <p>12 by -- by myself.</p> <p>13 BY MR. MARRIOTT:</p> <p>14 Q. Would you take a look, please, Mr. Wilson,</p> <p>15 at tab eight and tell me what that is?</p> <p>16 A. Tab eight is an AT&amp;T Information Systems,</p> <p>17 Incorporated licensing agreement between AT&amp;T-IS</p> <p>18 and the Santa Cruz operation, dated 1997 -- no.</p> <p>19 1987. Excuse me.</p> <p>20 Q. And, finally, would you take a look,</p> <p>21 please, at tab nine and tell me what that is?</p> <p>22 A. Tab nine is a -- a general public license,</p> <p>23 known as -- as GNU.</p> <p>24 Q. You're referring in tab nine to the --</p> <p>25 the, G-N-U, the general public license; is that</p>

1 right?  
 2 A. That's correct.  
 3 Q. Would you take a look, please, Mr. Wilson,  
 4 at Exhibit 76, the first tab of that, and tell me,  
 5 please, what tab one of Exhibit 76 is?  
 6 A. It's the AT&T Technologies, Incorporated  
 7 software agreement between IBM Corporation and AT&T  
 8 Technologies, executed by David Frasure in 1985.  
 9 Q. Was that executed on your behalf,  
 10 Mr. Wilson?  
 11 A. Yes, it was.  
 12 MR. GANT: I'm sorry. Objection. Vague.  
 13 Q. Would you take a look, please, at  
 14 Exhibit -- at tab two and tell me what that is?  
 15 A. Tab two is an AT&T sublicensing agreement  
 16 with AT&T Technologies, Incorporated, sublicensing  
 17 agreement between AT&T Technologies, Incorporated  
 18 and the IBM Corporation, executed by Dave Frasure  
 19 on my behalf in 1985.  
 20 Q. Would you take a look, please, Mr. Wilson,  
 21 at tab three and tell me what that is?  
 22 A. Tab three is a substitution agreement  
 23 executed between AT&T Technologies, Incorporated  
 24 and the International Business Machines  
 25 Corporation, executed by Dave Frasure on my behalf

1 in 1985.  
 2 Q. Would you take a look, please, at tab four  
 3 and tell me what that is?  
 4 A. Tab four is a -- is a letter regarding  
 5 software agreements and sublicensing agreement  
 6 and -- and substitution agreement in place with the  
 7 IBM Corporation, which was executed on my behalf by  
 8 David Frasure in 1985.  
 9 Q. Would you take a look, please, at tab five  
 10 and tell me what that is?  
 11 A. Tab five is an AT&T Technologies software  
 12 agreement between AT&T Technologies, Incorporated  
 13 and Sequent Computer Systems, Incorporated,  
 14 executed by myself on April 18th, 1985.  
 15 Q. Would you take a look, please, at tab six  
 16 and tell me what that is?  
 17 A. Tab six is a sublicensing agreement  
 18 between AT&T Technologies, Incorporated and Sequent  
 19 Computer Systems, which I executed in 1986.  
 20 Q. Would you take a look, please, at tab  
 21 seven and tell me what that is?  
 22 A. Tab seven is a substitution agreement  
 23 between AT&T Technologies, Incorporated and Sequent  
 24 Computer Systems, which I executed in January of  
 25 1986.

1 Q. Would you take a look, please, at tab  
 2 eight and tell me what that is?  
 3 A. Tab eight is a copy of the April issue of  
 4 the -- of the AT&T \$ echo publication.  
 5 Q. When you say, "the April issue,"  
 6 Mr. Wilson, April of what year?  
 7 A. April of 1985.  
 8 Q. Could you take a look, please, at tab nine  
 9 and tell me what that is?  
 10 A. Tab nine is a -- is a copy of the -- also  
 11 a copy of a \$ echo publication, dated August 1985.  
 12 Q. And, finally, could you take a look,  
 13 please, at tab ten of Exhibit 76 and tell me what  
 14 that is?  
 15 A. Tab ten is an AT&T Information Systems,  
 16 Incorporated software agreement between AT&T  
 17 Information Systems and the Santa Cruz operation,  
 18 which I executed in May of 1987.  
 19 Q. Direct your attention, if I may,  
 20 Mr. Wilson, to Exhibit 76, and ask you to look,  
 21 please, at page 12 of that exhibit -- actually, let  
 22 me, instead, direct you to paragraph 12, if I may,  
 23 which appears at page six.  
 24 MR. GANT: It starts on five. Do you want  
 25 to go in the middle of it?

1 BY MR. MARRIOTT:  
 2 Q. Take a look, please, in the middle of  
 3 Exhibit 76, paragraph 12, where -- where it begins,  
 4 "At least as I understood."  
 5 A. Okay.  
 6 Q. As you sit -- there, it states,  
 7 Mr. Wilson, "At least as I understood these  
 8 sections." Are the, "these sections," referred to  
 9 at page six the sections appearing on the previous  
 10 page, as sections 2.01, section 2.05, section 4.01,  
 11 as you indicated in your prior answer, section  
 12 7.06(a) and section 7.10 of the AT&T, UNIX  
 13 sublicensing -- UNIX licensing agreement concerning  
 14 IBM?  
 15 MR. GANT: Objection. Vague.  
 16 THE WITNESS: Yes.  
 17 BY MR. MARRIOTT:  
 18 Q. Okay. In fact, those are the provisions  
 19 of AT&T's standard software sublicense -- software  
 20 agreement at that time; correct?  
 21 MR. GANT: Objection. I'm sorry, David.  
 22 I didn't mean to cut you off.  
 23 Objection. Vague.  
 24 MR. MARRIOTT: It was a very bad question.  
 25 It probably should have been cut off. So let me

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1 sort of start again. Okay. Make your life and  
 2 mine much easier.  
 3 Let's just go off the record for one  
 4 second.  
 5 THE VIDEOGRAPHER: One moment, please.  
 6 Going off the record. The time is  
 7 10:03 a.m.  
 8 (MR. DAVIS HAS EXITED THE ROOM)  
 9 (RECESS TAKEN AT 10:03 A.M. TO 10:05 A.M.)  
 10 THE VIDEOGRAPHER: Back on the record.  
 11 The time is 10:05 a.m.  
 12 Please, continue.  
 13 BY MR. MARRIOTT:  
 14 Q. Mr. Wilson, let me direct your attention,  
 15 please, to Exhibit 76, to the second page and the  
 16 first numbered paragraph. Let me know when you  
 17 have that, sir?  
 18 A. I have it.  
 19 Q. Would you, please, read into the record  
 20 paragraph one of your declaration?  
 21 A. "I was responsible for the licensing  
 22 operating" -- or, "licensing operating systems  
 23 under the UNIX brand from 1980 until 1981" --  
 24 "1991." Excuse me. "First with the American  
 25 Telephone and Telegraph Company," paren, "AT&T, and

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1 then with its subsidiary, UNIX System Laboratories.  
 2 "Initially I was on the staff responsible  
 3 for negotiating license agreements with our  
 4 customers. From 1983 until I retired in 1991, I  
 5 was the head of the group responsible for licensing  
 6 the UNIX System V operating system worldwide."  
 7 Q. Is that an accurate statement, Mr. Wilson?  
 8 A. Yes, it is.  
 9 MR. GANT: Objection. Let me put on my  
 10 objection, which is compound, vague, lack of  
 11 foundation.  
 12 And if I could just ask you to just try  
 13 and pause a tad more between the question and your  
 14 response to allow me to put my objections on for  
 15 the record, which you can tune out.  
 16 THE WITNESS: Okay. Got you.  
 17 MR. GANT: Thank you.  
 18 THE WITNESS: Will do.  
 19 BY MR. MARRIOTT:  
 20 Q. Direct your attention to paragraph three,  
 21 Mr. Wilson. In paragraph three your declaration  
 22 states that you joined AT&T in 1963; is that right?  
 23 A. That's correct.  
 24 Q. What were you doing before you joined AT&T  
 25 in 1963?

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1 A. I was in the U.S. Air Force  
 2 (MR. DAVIS THEN RE-ENTERED THE ROOM)  
 3 THE WITNESS: No. Correction. I was out  
 4 of the Air Force.  
 5 BY MR. MARRIOTT:  
 6 Q. Well, it was 40 years ago. So --  
 7 A. Yeah, right. No. Yeah. There was a  
 8 period there. What was I doing? I was kind of  
 9 traveling around. I was working in Kannapolis,  
 10 North Carolina.  
 11 Q. Do you recall what you were doing there?  
 12 A. Yeah. I was working in a bakery.  
 13 Q. Okay.  
 14 A. Uh-huh.  
 15 MR. GANT: Air Force, bakery.  
 16 THE WITNESS: Which I got out of the Air  
 17 Force -- I left the Air Force in 1982 and came --  
 18 came to North Carolina, because my family was here.  
 19 I hadn't seen them in four years. And I was  
 20 working part time in a bakery. Ironically, I got  
 21 an offer for a job at AT&T and IBM the same week.  
 22 And so --  
 23 BY MR. MARRIOTT:  
 24 Q. You declined the job from IBM, I take it?  
 25 A. Well, they wanted me to go to Cleveland.

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1 The other one I would go to Charlotte. So at the  
 2 time I wanted to stay here around the family. So I  
 3 went to work for AT&T. At that time it was Western  
 4 Electric.  
 5 Q. In -- in the next sentence of paragraph  
 6 three you state, "In 1980, after completing a  
 7 company-sponsored management training program, I  
 8 left the Princeton office of AT&T to join the  
 9 patent and licensing group in Greensboro,  
 10 North Carolina." Could you describe, please, what  
 11 the company-sponsored management training program  
 12 was about?  
 13 A. It was a -- an accelerated MBA program for  
 14 selected management employees. You were required  
 15 to be in the program for a year, almost a year.  
 16 And the best way to describe it was an accelerated  
 17 MBA program.  
 18 And out of that program you were assigned  
 19 to a -- a location in the company, in an area which  
 20 you had not worked before, for people you had not  
 21 worked before. So it was -- it was all part of a  
 22 plan to make you versatile enough to work in any  
 23 part of the AT&T company or its subsidiaries.  
 24 Q. And how did you come to be involved in  
 25 that training program?

<p style="text-align: right;">Page 41</p> <p>1 A. It was a competitive selection. I was 2 number one out of 10,000 people that were -- that 3 went in for it. 4 Q. Further, in paragraph two, you say, "I was 5 responsible for licensing operating systems under 6 the UNIX brand beginning in 1980. Initially I was 7 on the staff for negotiating license agreements 8 with our customers. 9 "Beginning in 1983 until I retired in 1991 10 I was the head of the group responsible for 11 licensing the UNIX System V operating system 12 worldwide." Is that an accurate description of 13 your employment at AT&amp;T during the relevant period? 14 A. Yes, it is. 15 Q. Would you read, please, into the record 16 paragraph four? 17 A. "In 1989 AT&amp;T separated the organizations 18 responsible for UNIX, and associated system 19 software products and services, into a business 20 unit called UNIX software operation. In 1991 the 21 rights to the UNIX operating system and related 22 products, technology and intellectual property were 23 transferred to USL." I remained the head of the 24 organization -- licensing organization throughout 25 these changes.</p>	<p style="text-align: right;">Page 43</p> <p>1 THE WITNESS: The organization responsible 2 for this, the licensing of software, was one I was 3 a part of, and I was there at the -- the inception. 4 So I know all of the agreements concerning the 5 software products actually came through my 6 organization. 7 BY MR. MARRIOTT: 8 Q. Would you read, please, paragraph six into 9 the record? 10 A. "The UNIX System V source code license 11 agreements generally included a number of standard 12 form agreements with each licensee. The standard 13 software agreement granted the licensee the right 14 to use and modify the source code for its own 15 internal business purposes. 16 "In addition, many licensees were parties 17 to sublicensing agreements, which granted the 18 licensee the right to furnish sublicensed products 19 based on UNIX System V to customers in object code 20 format. 21 "A substitution agreement provided that 22 the software agreement, and, if applicable, the 23 sublicensing agreement, replaced earlier agreements 24 relating to UNIX System V software." 25 Q. Are you sure that's true, Mr. Wilson?</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. Does that accurately describe your 2 employment at AT&amp;T? 3 A. Yes. 4 MR. GANT: Objection. Compound, vague. 5 THE WITNESS: Yes, it does. 6 BY MR. MARRIOTT: 7 Q. In paragraph five you state that, "During 8 the period from 1980 to 1991 AT&amp;T and USL licensed 9 UNIX source code, including UNIX System V source 10 code, to hundreds of licensees. Nearly every UNIX 11 license agreement executed by AT&amp;T" -- well, 12 withdrawn. 13 In paragraph five you state, "During the 14 period from 1980 to 1991 AT&amp;T and USL licensed UNIX 15 source code, including UNIX System V source code, 16 to hundreds of licensees. Nearly every UNIX 17 license agreement executed by AT&amp;T during this 18 period was signed by me or on my behalf by people 19 that reported to me." Is that an accurate 20 statement, Mr. Wilson? 21 MR. GANT: Same objections. 22 THE WITNESS: Yes, it is. 23 Q. And how is it that you know that to be an 24 accurate statement, Mr. Wilson? 25 MR. GANT: Same objection. Vague.</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. GANT: Objection. Compound, vague, 2 leading, foundation. 3 THE WITNESS: Yes. 4 BY MR. MARRIOTT: 5 Q. In paragraph seven you state that you are 6 familiar with licensing agreements between AT&amp;T 7 Technologies, Inc. and IBM, which you say were 8 negotiated under your supervision while you were 9 head of AT&amp;T's licensing group. Is that an 10 accurate statement? 11 MR. GANT: Same objections. 12 THE WITNESS: Yes, it is. 13 BY MR. MARRIOTT: 14 Q. Who's David Frasure, Mr. Wilson? 15 A. David Frasure was one of the negotiators 16 in our organization that reported -- whom I 17 supervised. 18 Q. Okay. And during what period of time did 19 Mr. Frasure report to you? 20 A. Oh. 21 Q. Withdrawn. 22 Over what period of time roughly did 23 Mr. Frasure report to you? 24 A. About six years. The period -- I'm trying 25 to -- the period from about '84 to '91, I would</p>

1 think.  
2 MR. GANT: I couldn't hear the end of your  
3 answer.  
4 THE WITNESS: '84 to '91. I'm not exactly  
5 sure exactly the period, but he was -- he was there  
6 for a good six years, I guess.  
7 BY MR. MARRIOTT:  
8 Q. And how did Mr. Frasure come to work for  
9 you at AT&T?  
10 A. I actually recruited Dave Frasure for one  
11 of the other organizations within Western Electric  
12 at the time.  
13 Q. Why did you do that, Mr. Wilson?  
14 A. Personal knowledge of his work and the --  
15 his expertise with the software and -- and through  
16 the interview process.  
17 Q. In paragraph eight you state that you were  
18 familiar with licensing agreements between AT&T  
19 Technologies and Sequent Computer Systems, which  
20 you say were also supervised under your  
21 supervision; is that correct?  
22 MR. GANT: Objection. Vague, compound,  
23 foundation.  
24 THE WITNESS: Yes, it is.  
25 BY MR. MARRIOTT:

1 Q. And did you, as stated in -- in paragraph  
2 eight, sign those agreements on behalf of AT&T,  
3 Mr. Wilson?  
4 A. Yes, I did.  
5 MR. GANT: Same -- same objections.  
6 Excuse me.  
7 THE WITNESS: Excuse me.  
8 Yes, I did.  
9 BY MR. MARRIOTT:  
10 Q. And is it, in fact, your understanding  
11 that Sequent has now been acquired by and merged  
12 into IBM?  
13 A. Yes.  
14 Q. You need to speak audibly.  
15 A. Yes.  
16 No. I was waiting --  
17 MR. GANT: I appreciate it. Thank you.  
18 Contrary to Mr. Marriott's suggestion, I'm not  
19 going to object to every question, only  
20 objectionable questions.  
21 BY MR. MARRIOTT:  
22 Q. Take a look, if you would, Mr. Wilson, to  
23 paragraph nine. Would you read that for me,  
24 please, into the record?  
25 A. "As a result of my role as head of the

1 group responsible for negotiating the IBM  
2 agreements and the Sequent agreements and hundreds  
3 of other UNIX System V licensing agreements, I have  
4 a thorough understanding of these agreements and  
5 what the parties intended" -- "intended them to  
6 accomplish."  
7 Q. Why did you say that in your declaration,  
8 Mr. Wilson?  
9 A. That's -- that's a statement of fact.  
10 It's -- it's what I believe.  
11 Q. Let me direct your attention, if I may, to  
12 paragraph ten of your declaration. There you state  
13 that from 1983 until 1991, while you were  
14 responsible for licensing UNIX System V for AT&T  
15 and USL, your group licensed UNIX System V source  
16 code and related materials to a large number of  
17 licensees around the world. Is that an accurate  
18 statement of your activities during the period from  
19 1983 to 1991?  
20 MR. GANT: Objection. Leading, compound,  
21 vague, foundation.  
22 THE WITNESS: Yes, it is.  
23 BY MR. MARRIOTT:  
24 Q. Would you read paragraph 11 into the  
25 record for me, please?

1 A. "The standard software agreement that we  
2 used to license UNIX System V source code and  
3 related materials sets forth the various rights  
4 given to licensees and the restrictions imposed on  
5 the licensees with respect to such materials, which  
6 were called the," quote, "software product or  
7 software products in the agreement."  
8 Q. To the best of your understanding,  
9 Mr. Wilson, is there anything inaccurate about that  
10 statement?  
11 MR. GANT: Same objections and leading.  
12 THE WITNESS: I believe that to be an  
13 accurate statement.  
14 (DISCUSSION OFF THE RECORD)  
15 BY MR. MARRIOTT:  
16 Q. Mr. Wilson, may I direct your attention to  
17 paragraph 12 of your declaration, dated April 26th,  
18 2004?  
19 A. Okay.  
20 Q. Paragraph 12 lists five provisions of what  
21 you describe here as the standard early software  
22 agreement of AT&T. Are you familiar with each of  
23 the provisions listed there?  
24 MR. GANT: Objection. Mischaracterizes  
25 the document, vague, foundation, compound.

1 THE WITNESS: Yes, I am.  
 2 BY MR. MARRIOTT:  
 3 Q. Would you describe -- would you read for  
 4 me paragraph 12, Mr. Wilson?  
 5 A. "Among the standard provisions in our  
 6 early software agreements, including the IBM  
 7 software agreement and the Sequent software  
 8 agreement, were the following:  
 9 "Section 2.01," colon, "AT&T grants the  
 10 licensee a personal, nontransferable and  
 11 nonexclusive right to use in the United States each  
 12 software product identified in one or more of the  
 13 supplements hereto, solely for the licensee's own  
 14 internal business purposes." Starting from,  
 15 "AT&T," to, "business purposes," are in quotes.  
 16 "Section 2.05," colon, quotation -- open  
 17 quotation. "No right is granted by this agreement  
 18 for the use of software products directly for  
 19 others or for any use of software products by  
 20 others," close quotation.  
 21 THE WITNESS: Do I need to read all of  
 22 those?  
 23 MR. GANT: You have to ask Mr. Marriott  
 24 what he wants.  
 25 MR. MARRIOTT: Do whatever you're

1 THE WITNESS: No.  
 2 BY MR. MARRIOTT:  
 3 Q. You made reference in previous testimony  
 4 to there being a typo in -- in the third bullet  
 5 point at page five. Could you describe what you  
 6 meant by that, please?  
 7 A. Section -- as indicated in the page five  
 8 of this document, section -- it references section  
 9 4.03. The reference should be to section 4.01.  
 10 The text that follows that is correct, but the  
 11 reference to the section should be 4.01.  
 12 Q. How did that come to your attention,  
 13 Mr. Wilson?  
 14 A. In reading it. Reading -- actually  
 15 reading -- excuse me. In reading the document.  
 16 Q. Would you look, please, at page six and  
 17 that remaining portion of paragraph 12 of your  
 18 declaration, which begins, "These provisions"?  
 19 A. Uh-huh.  
 20 Q. Would you just read that section to  
 21 yourself and tell me when you're finished, please?  
 22 A. Okay.  
 23 Q. Is there anything inaccurate about what  
 24 you've read in the remaining portions of paragraph  
 25 12?

1 comfortable with, Mr. Wilson.  
 2 THE WITNESS: "Section 4.03," colon, open  
 3 paren. "Licensee agrees that it will not, without  
 4 the prior written consent of AT&T, export directly  
 5 or indirectly software products covered by this  
 6 agreement to any country outside of the  
 7 United States," close quote.  
 8 "Section 7.06," parentheses, little A,  
 9 colon, open quotation. "Licensee agrees that it  
 10 shall hold all parts of the software products  
 11 subject to this agreement in confidence for AT&T,"  
 12 close quotation.  
 13 "Section 7.10," colon, open quote.  
 14 "Except as provided in section 7.06," paren, small  
 15 B, "nothing in this agreement grants to licensee  
 16 the right to sell, lease or otherwise transfer or  
 17 dispose of a software product in whole or in part."  
 18 Close quote.  
 19 Q. Let me just stop you there, if I may,  
 20 Mr. Wilson, is -- is there anything, to your  
 21 understanding, inaccurate about what you've read so  
 22 far from paragraph 12?  
 23 MR. GANT: Objection -- objection. Vague,  
 24 compound, foundation, calls for speculation and  
 25 legal conclusions.

1 MR. GANT: Same objections.  
 2 THE WITNESS: There is not.  
 3 BY MR. MARRIOTT:  
 4 Q. There's nothing about that you'd change?  
 5 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE)  
 6 Q. Let me direct your attention in  
 7 particular, Mr. Wilson --  
 8 MR. GANT: Was there an answer? I didn't  
 9 hear it.  
 10 MR. MARRIOTT: He said, no.  
 11 THE WITNESS: No.  
 12 MR. GANT: Okay. Thanks.  
 13 BY MR. MARRIOTT:  
 14 Q. Would you -- direct your attention,  
 15 please, to that portion of the latter part of  
 16 paragraph 12 that begins, "At least as I  
 17 understood." Could you read that portion, please,  
 18 for me into the record?  
 19 A. "At least as I understood these sections  
 20 and discussed them with our licensees, they do not,  
 21 and were not intended to, restrict our licensees'  
 22 rights to use, export, disclose or transfer their  
 23 own products and source code, as long as they did  
 24 not use, export, disclose or transfer AT&T's UNIX  
 25 System V source code along with it. I never

<p style="text-align: right;">Page 53</p> <p>1 understood AT&amp;T's software agreements to place any  2 restriction on our customers' use of their own  3 original work."  4 Q. What is the basis, Mr. Wilson, of -- of  5 those statements?  6 MR. GANT: Objection. Vague, compound.  7 THE WITNESS: The -- the statement goes  8 to -- goes to the heart of the licensing program,  9 from the standpoint that we required our licensees  10 to protect the software products under the -- under  11 the stipulations in the software agreement, and we  12 did not intend to exercise any control or  13 restriction on those products that did not contain  14 portions of the software products.  15 BY MR. MARRIOTT:  16 Q. Did AT&amp;T intend to exercise any control  17 over modifications or derivative works that --  18 withdrawn.  19 Did AT&amp;T intend to exercise any control  20 over those portions of modifications or derivative  21 works of the software product that did not include  22 UNIX System V source code?  23 MR. GANT: Objection. Leading, compound,  24 vague, lack of foundation, calls for speculation  25 and for legal conclusions.</p>	<p style="text-align: right;">Page 55</p> <p>1 IBM software agreement and the Sequent software  2 agreement, included the following language: Such  3 right to use includes the right to modify such  4 software product and to prepare derivative works  5 based on such software product provided the  6 resulting materials are treated hereunder as part  7 of the original software product."  8 Do you see that, sir?  9 A. Yes, I do.  10 Q. Do you agree with the statements made in  11 paragraph 13 of your declaration?  12 MR. GANT: Objection. Leading,  13 foundation, vague, calls for speculation and legal  14 conclusions.  15 THE WITNESS: Yes.  16 BY MR. MARRIOTT:  17 Q. Is there anything about that statement you  18 would change, Mr. Wilson?  19 MR. GANT: Objection. Vague.  20 THE WITNESS: I would not.  21 Q. Would you, please, read into the record  22 for me paragraph 14 of your declaration?  23 A. "As my staff and I communicated to our  24 licensees, this provision was only intended to  25 ensure that if a licensee were to create a</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Would you like the question read back?  2 A. No.  3 No. We didn't -- we did not intend to  4 extend our licensing agreement clauses to anything  5 other than the software product delivered with  6 those -- those agreements.  7 Q. Direct your attention, please, Mr. Wilson,  8 to paragraph 13.  9 MR. GANT: I'm sorry, David. Can I ask  10 that last answer to be read back?  11 MR. MARRIOTT: Sure.  12 MR. GANT: It was long, and I want to make  13 sure I got it. Thank you.  14 (DISCUSSION OFF THE RECORD)  15 (REQUESTED PORTION OF THE RECORD READ)  16 MR. GANT: Thank you. Thank you, David.  17 (DISCUSSION OFF THE RECORD)  18 BY MR. MARRIOTT:  19 Q. May I look at paragraph -- may I direct  20 your attention rather to paragraph 13, Mr. Wilson.  21 Paragraph 13 states, "AT&amp;T's standard software  22 agreements also granted licensees the right to  23 modify UNIX System V source code and to prepare  24 derivative works based upon that code. Section  25 2.01 of our early software agreement, including the</p>	<p style="text-align: right;">Page 56</p> <p>1 modification or derivative work based on UNIX  2 System V, any material portion of the original UNIX  3 System V source code provided by AT&amp;T or USL that  4 was included in the modification or derivative work  5 would remain subject to the confidentiality and  6 other restrictions of the software agreement.  7 "As we understood section 2.01, any source  8 code developed by or for a licensee and included in  9 a modification or a derivative work would not  10 constitute resulting materials to be treated as  11 part of the original software product, except for  12 any material proprietary UNIX System V source code  13 provided by AT&amp;T or USL and included therein."  14 Q. Is that an accurate statement, sir?  15 MR. GANT: Objection. Vague, compound,  16 lack of foundation, calls for speculation and legal  17 conclusions.  18 THE WITNESS: Yes, it is.  19 BY MR. MARRIOTT:  20 Q. Would you, please, read for me into the  21 record paragraph 15?  22 A. "AT&amp;T and USL did not intend to assert  23 ownership or control over modifications and  24 derivative works prepared by licensees, except to  25 the extent of the original UNIX System V source</p>



1 code included in such modifications and derivative  
2 works.

3 "Although, the UNIX System V source  
4 contained in a modification or derivative work  
5 continued to be owned by AT&T or USL, the code  
6 developed by or for the licensee remained the  
7 property of the licensee, and could, therefore, be  
8 used, exported, disclosed or transferred freely by  
9 the licensee."

10 Q. You testified, Mr. Wilson, previously that  
11 that paragraph represents a true statement. Why  
12 did you provide that testimony?

13 A. Because I believe it to be a true  
14 statement.

15 Q. May I direct your attention, please, to  
16 paragraph 16. There you say, "I do not believe  
17 that our licensees would have been willing to enter  
18 into the software agreement if they understood  
19 section 2.01 to grant AT&T or USL the right to own  
20 or control source code developed by the licensee or  
21 provided to the licensee by a third party.

22 "I understood that many of our licensees  
23 invested substantial amounts of time, effort and  
24 creativity in developing products based on UNIX  
25 System V. The derivative works provision of the

1 software agreement was not meant to appropriate for  
2 IBM" -- "was not meant to appropriate for AT&T,"  
3 rather, "or USL the technology developed by our  
4 licensees." Is that --

5 MR. GANT: Where is Dr. Freud when we need  
6 him?

7 MR. MARRIOTT: Dead.

8 BY MR. MARRIOTT:

9 Q. Is -- is that an accurate statement,  
10 Mr. Wilson?

11 MR. GANT: Same objections.

12 THE WITNESS: Yes.

13 Q. And why do you say what you say there in  
14 paragraph 16 of your declaration?

15 MR. GANT: Objection. Vague, compound.

16 THE WITNESS: Both 15 and 16 were -- are  
17 directed towards clarifying what was the intent of  
18 our software licensing program, and that -- that  
19 was what I was trying to -- to focus on with these  
20 two statements.

21 BY MR. MARRIOTT:

22 Q. In paragraph 17 of your declaration you  
23 say, "In fact, some licensees sought to clarify  
24 that under the agreements the licensee, not AT&T or  
25 USL, would own and control modifications and

1 derivative works prepared by or for the licensee,  
2 except for any original UNIX System V source code  
3 provided by AT&T or USL and included therein.

4 "We provided such clarification when  
5 asked, because that is what we understood the  
6 language in the standard software agreement to mean  
7 in any event. In some cases we provided this  
8 clarification orally, and in some cases we provided  
9 it in writing."

10 Is there anything you would change about  
11 the accuracy of that statement, Mr. Wilson?

12 MR. GANT: Objection. Foundation.

13 THE WITNESS: I would not.

14 BY MR. MARRIOTT:

15 Q. In paragraph 18 you state, "In fact,  
16 although I am not a lawyer, it was my view at the  
17 time that we could not claim any rights to non-UNIX  
18 System V source code, as the plaintiff here appears  
19 to be doing, without raising serious antitrust  
20 issues.

21 "In light of the divestiture of AT&T  
22 around that time, we, as a company, were very  
23 concerned with the potential anticompetitive  
24 effects of our actions.

25 "As a result, one of the reasons we made

1 clear to our licensees that our UNIX System V  
2 software agreements did not impose any restrictions  
3 on the use or disclosure of their own original  
4 code, except insofar as it included UNIX System V  
5 code, was to avoid any appearance of impropriety."

6 Why do you say that in paragraph 18,  
7 Mr. Wilson?

8 MR. GANT: Objection. Vague, leading,  
9 calls for speculation and legal conclusions.

10 THE WITNESS: I stated that, because  
11 during this period of time -- 1983 being the date  
12 that really kicked off -- the Bell system was going  
13 through another separation or breakup. The first  
14 was in 1956, when Sequent decreed our -- our  
15 business with the AT&T Bell system was limited to  
16 communication.

17 And in 1983 there was a major separation  
18 of the operating telephone companies and AT&T into  
19 different groups. And there was a high level of  
20 concern that we did not infringe on any businesses  
21 that we were not supposed to be into.

22 And so the whole software program was  
23 started with software that was developed for other  
24 purposes within AT&T, and we went through our  
25 patent licensing organization as a -- stuff that

<p style="text-align: right;">Page 61</p> <p>1 had been used for a primary purpose was now made  2 available to the -- to licensees under -- under  3 these agreements.  4 Q. Let me just -- and I don't want to cut off  5 your answer, but let me just caution you in  6 responding to the question not to provide any  7 information that might be privileged of AT&amp;T. So  8 with that caveat, continue, if you -- if you have  9 more to say.  10 A. No. I'll -- I'll stop right there.  11 MR. GANT: Well, let me just ask for a  12 clarification. Has that been the case with all of  13 your prior questions and all of the witness' prior  14 answers, that none of the answers that he has  15 provided have been based in any way on any  16 communications with AT&amp;T's counsel?  17 MR. MARRIOTT: Well, you'll have to ask  18 that question of the witness, but it's certainly  19 not my intent by way of any of my questions to seek  20 information that -- that is privileged.  21 MR. GANT: And has that been your intent  22 during the -- your questions that you've already  23 asked?  24 MR. MARRIOTT: I think I just said that.  25 MR. GANT: Okay. I just wanted to make it</p>	<p style="text-align: right;">Page 63</p> <p>1 accurately quoted in your declaration at page  2 eight, paragraph 19?  3 MR. GANT: Objection. Vague.  4 THE WITNESS: It's not -- it's not  5 verbatim, but it -- it -- it captures the essence  6 of both places.  7 BY MR. MARRIOTT:  8 Q. When you say, "It's not verbatim," I'm  9 actually referring only to the quoted portion in  10 paragraph 19, where it says, "Regarding section  11 2.01."  12 MR. GANT: I think he means because of the  13 brackets it's not verbatim.  14 THE WITNESS: Right.  15 MR. MARRIOTT: Okay. Fair enough. Thank  16 you for the clarification.  17 BY MR. MARRIOTT:  18 Q. Do you think in substance that what's  19 quoted at page eight of your declaration accurately  20 reflects paragraph two of the side letter at tab  21 four of your declaration?  22 MR. GANT: Objection. Vague.  23 THE WITNESS: Yes, I do.  24 BY MR. MARRIOTT:  25 Q. Under the quote at paragraph 19 of your</p>
<p style="text-align: right;">Page 62</p> <p>1 clear, if you did. So --  2 MR. MARRIOTT: Yeah.  3 Q. To -- just so -- for clarity, to your  4 understanding, Mr. Wilson, has the testimony you've  5 provided to this point in the deposition in any way  6 required you to disclose information that you  7 believe to be protected by an attorney/client  8 privilege?  9 MR. GANT: Objection. Vague, calls for a  10 legal conclusion.  11 THE WITNESS: It has not.  12 BY MR. MARRIOTT:  13 Q. In paragraph 19 you state, "We provided  14 IBM with just such a clarification in paragraph A.2  15 of the IBM side letter." The side letter  16 referenced there, Mr. Wilson, is attached to this  17 declaration as -- as tab four; is that correct?  18 A. That is correct.  19 Q. Direct your attention, if I may,  20 Mr. Wilson, to page two of the side letter, which  21 is at tab four of your declaration. Do you see --  22 do you see on page two, paragraph two --  23 A. Yes, I do.  24 Q. -- what's stated in the beginning,  25 "Regarding"? Is that accurately -- is that</p>	<p style="text-align: right;">Page 64</p> <p>1 declaration you state, "I understood this  2 language," referring to the language of the side  3 letter, "to mean that IBM, not AT&amp;T or USL, would  4 have the right to control modifications and  5 derivative works prepared by or for IBM.  6 "IBM, like all licensees under the  7 agreements, fully owns any modifications of and  8 derivative works based on UNIX System V prepared by  9 or for IBM, and can freely use, copy, distribute or  10 disclose such modifications and derivative works,  11 provided that IBM does not copy, distribute or  12 disclose any material portions of the original UNIX  13 System V source code provided by AT&amp;T or USL,  14 except as otherwise permitted by the IBM  15 agreements."  16 Does paragraph 19 reflect your  17 understanding, Mr. Wilson?  18 MR. GANT: Objection. Vague, compound,  19 lack of foundation, calls for speculation and for  20 legal conclusions.  21 THE WITNESS: Yes, they do.  22 BY MR. MARRIOTT:  23 Q. In -- in paragraph 20 you say,  24 "Clarifications of the kind reflected in" -- "in  25 paragraph A.2 of the IBM side letter did not</p>

1 represent a substantive change to the standard  
2 software agreement, since AT&T and USL never  
3 intended to assert ownership or control over  
4 modifications and derivative works prepared by  
5 licensees, except to the extent of any material  
6 portions of the original UNIX System V source code  
7 provided by AT&T or USL and included in such  
8 modifications and derivative works."  
9 Do you see that?  
10 A. Yes, I do.  
11 Q. Is there anything about that that you  
12 would change, Mr. Wilson?  
13 MR. GANT: Objection. Vague, leading.  
14 THE WITNESS: I do not.  
15 BY MR. MARRIOTT:  
16 Q. You do not --  
17 A. I do not see anything that I would change.  
18 Q. Okay. Thank you.  
19 In the following paragraph you make  
20 reference to numerous inquiries received from  
21 licensees. Could you explain, please, what you  
22 meant by that?  
23 A. We got numerous inquiries -- we were  
24 constantly having questions about our licensing  
25 agreements and what they meant and how to interpret

1 them. You mean the whole paragraph or just that  
2 sentence?  
3 Q. Just that -- you've answered the question.  
4 A. Okay.  
5 Q. Do you -- do you have familiarity with  
6 something known as the \$ echo publication?  
7 A. Yes, I do.  
8 Q. And you made reference to that in prior  
9 testimony; right?  
10 A. Yes, I did.  
11 Q. Would you just briefly describe what the  
12 \$ echo publication was?  
13 A. \$ echo was a newsletter prepared for  
14 distribution to our licensees, and it covered  
15 product information, licensing information and  
16 anything of general interest to all of our  
17 licensees as a way to convey it to them.  
18 Q. Did Mr. Frasure have any role with respect  
19 to the \$ echo publication?  
20 MR. GANT: Objection. Vague, leading.  
21 THE WITNESS: Mr. Frasure, as long as with  
22 other folks in the licensing organization, were  
23 contributing to the information concerning  
24 licensing that was contained within the \$ echo  
25 newsletter. He, among others. In other words,

1 this was just clarifications with regard to  
2 licensing. That was a section of the newsletter.  
3 BY MR. MARRIOTT:  
4 Q. Did you have any role in reviewing and  
5 approving the content of the \$ echo publications?  
6 MR. GANT: Objection. Vague.  
7 THE WITNESS: Yes, I did. I was  
8 responsible to ensure the accuracy of the  
9 information concerning licensing policies and  
10 agreements.  
11 BY MR. MARRIOTT:  
12 Q. In paragraph 23 of your declaration you  
13 make reference to seminars at which Mr. Frasure  
14 discussed the newsletter. Can you tell -- tell us,  
15 please, what you're referring to there?  
16 MR. GANT: Objection. Vague, compound.  
17 THE WITNESS: Just saying in addition to  
18 the newsletter, we actually presented the material  
19 in the newsletter to our licensees at seminars and  
20 conferences that we held for UNIX system licensees.  
21 BY MR. MARRIOTT:  
22 Q. Was the -- withdrawn.  
23 Was the purpose of the \$ echo publication  
24 to change the -- the terms or meaning of the AT&T,  
25 UNIX licensing agreements?

1 MR. GANT: Objection. Leading, vague;  
2 compound, foundation, calls for speculation and  
3 legal conclusions.  
4 THE WITNESS: Our purpose with the  
5 newsletter was just to provide information to our  
6 licensees, to keep them abreast of what was going  
7 on with the product.  
8 MR. GANT: Objection. Move to strike as  
9 nonresponsive.  
10 BY MR. MARRIOTT:  
11 Q. What was the purpose of the newsletter,  
12 Mr. Wilson?  
13 A. The purpose of the newsletter was to  
14 provide information on our licensing agreements and  
15 policies, our software products and any -- any  
16 other information that would be beneficial to our  
17 licensees in using those software products.  
18 Q. And what -- what gave rise to the  
19 publication of the newsletter?  
20 MR. GANT: Objection. Vague.  
21 THE WITNESS: The -- the numerous  
22 inquiries that we received from our licensees  
23 concerning any specific issue. We felt it was a  
24 more efficient way to communicate the same message  
25 to all licensees in a way that they could receive

<p style="text-align: right;">Page 69</p> <p>1 it without -- you know; try to reduce the number of  2 phone calls we had about repetitive issues that  3 would come up in those inquiries.  4 BY MR. MARRIOTT:  5 Q. Would you read to yourself, please,  6 paragraph 25 of your declaration?  7 A. (THE WITNESS COMPLIED)  8 Q. Do you stand by that statement?  9 MR. GANT: Objection. Leading, vague,  10 compound, foundation, calls for speculation and for  11 legal conclusions.  12 THE WITNESS: Yes, I do.  13 BY MR. MARRIOTT:  14 Q. What is a specimen copy, Mr. Wilson?  15 A. As referenced here, a specimen copy was  16 a -- what do you call it? I'm trying to think of  17 the right term. It was a -- it was a copy of the  18 agreement that could not be executed. It was just  19 a copy of the language.  20 Q. Did the \$ echo publications provide  21 clarification to your licensees concerning AT&amp;T's  22 understanding of the AT&amp;T licensing agreements?  23 MR. GANT: Objection. Leading, vague,  24 foundation, calls for legal conclusions.  25 THE WITNESS: I hope they did. We got</p>	<p style="text-align: right;">Page 71</p> <p>1 Q. What is a side letter, Mr. Wilson?  2 A. A side letter is a term that we use to --  3 to classify a document that was written in response  4 to an inquiry about the base software agreement or  5 the sublicense agreement, what have you. So it was  6 a -- usually a clarification or a modification of  7 terms.  8 Q. In paragraph --  9 MR. GANT: I'm sorry. I wanted that read  10 back. I'm sorry. I didn't mean to -- the question  11 and the answer.  12 (REQUESTED PORTION OF THE RECORD READ)  13 BY MR. MARRIOTT:  14 Q. I think that got a little confused. Let  15 me ask you, by way of clarification, Mr. Wilson,  16 you say in paragraph 27 of your affidavit, "Whether  17 or not we entered into a side letter or other  18 agreements with our licensees to clarify the  19 treatment of modifications and derivative works or  20 altered the language of section 2.01, AT&amp;T's and  21 USL's intent was always the same." What do you  22 mean by that, sir?  23 MR. GANT: Objection. Leading, vague,  24 compound.  25 THE WITNESS: What I meant by that is</p>
<p style="text-align: right;">Page 70</p> <p>1 good response from the licensing community with the  2 \$ echo once we started putting it out. We had very  3 positive response.  4 BY MR. MARRIOTT:  5 Q. And who -- who did you intend to be the --  6 the beneficiaries of the clarifications made in the  7 \$ echo publications?  8 MR. GANT: Same objections.  9 THE WITNESS: Both the licensing  10 organization and our licensees, because it was a --  11 it was a way -- a way of communicating. And so it  12 was to our mutual benefit. Us, by not having to  13 keep answering the same questions, and, also, it  14 assured our licensees that the information being  15 provided was being provided to everyone.  16 BY MR. MARRIOTT:  17 Q. Are you familiar with the term side  18 letter?  19 A. Yes, yes.  20 MR. MARRIOTT: You're very good at helping  21 him.  22 MR. GANT: I appreciate it, as does the  23 court reporter, I'm sure.  24 THE WITNESS: Uh-huh.  25 BY MR. MARRIOTT:</p>	<p style="text-align: right;">Page 72</p> <p>1 section 2.01 in its original presentation, as well  2 as the -- the clarification that we provided later,  3 the intent behind the language in both cases was  4 the same. It was just another way of stating what  5 was meant by our intent in writing the language the  6 way we did.  7 BY MR. MARRIOTT:  8 Q. In the next sentence in paragraph 27 you  9 indicate that, "We never intended to assert  10 ownership or control over any portion of a  11 modification or derivative work that was not part  12 of the original UNIX System V source code provided  13 by AT&amp;T or USL.  14 "The licensee was free to use, copy,  15 distribute or disclose its modifications and  16 derivative works, provided that it did not use,  17 copy, distribute or disclose any portions of the  18 original UNIX System V source code provided by AT&amp;T  19 or USL, except as permitted by the license  20 agreements."  21 You say, Mr. Wilson, there that you never  22 intended to assert such ownership or control. Why  23 is that, sir?  24 MR. GANT: Same objections.  25 THE WITNESS: That -- that just was not</p>

1 our intent. We did not -- we did not want  
2 ownership in any product that was created by or for  
3 our licensees. We only wanted to protect the  
4 underlying software product provided under the  
5 licensing agreement.  
6 MR. GANT: Move to strike as  
7 nonresponsive.  
8 BY MR. MARRIOTT:  
9 Q. Did AT&T, Mr. Wilson, intend to assert  
10 ownership or control over any portion of a  
11 modification or derivative work that was not part  
12 of the original UNIX System V source code provided  
13 by AT&T or USL?  
14 MR. GANT: Objection. Vague, compound,  
15 foundation, calls for speculation and legal  
16 conclusions.  
17 THE WITNESS: No.  
18 BY MR. MARRIOTT:  
19 Q. Let me direct your attention, if I may --  
20 MR. MARRIOTT: And I propose, if it's  
21 agreeable, that upon conclusion of this declaration  
22 we take a little break, if that's okay?  
23 MR. GANT: That's fine.  
24 BY MR. MARRIOTT:  
25 Q. Okay. Let me just direct your attention

1 to paragraph 28, Mr. Wilson. There you say, "My  
2 understanding is that IBM's AIX and Sequent's  
3 Dynix," slash, "PTX operating system products  
4 include some UNIX System V source code.  
5 "I do not know whether AIX and Dynix/PTX  
6 are sufficiently similar to UNIX System V that they  
7 would constitute modifications of or derivative  
8 works based on UNIX System V. However, even if AIX  
9 or Dynix/PTX were modifications of or derivative  
10 works based on UNIX System V, IBM and Sequent are  
11 free to use, export, disclose or transfer AIX and  
12 Dynix/PTX source code, provided that they do not  
13 use, export, disclose or transfer any UNIX System V  
14 source code provided by AT&T or USL, except as  
15 otherwise permitted by the agreements.  
16 "Therefore, IBM and Sequent are free,  
17 under the IBM agreements and the Sequent  
18 agreements, to open source all of AIX and  
19 Dynix/PTX, other than those portions of the  
20 original UNIX System V source code included  
21 therein.  
22 "Even portions of the original UNIX  
23 System V source code included in AIX and Dynix/PTX  
24 may be open sourced to the extent permitted by the  
25 IBM agreements and the Sequent agreements."

1 Do the contents of that paragraph reflect  
2 your intent, Mr. Wilson?  
3 MR. GANT: Objection. Leading, vague,  
4 compound.  
5 THE WITNESS: Yes, it does.  
6 BY MR. MARRIOTT:  
7 Q. And do you believe the contents of  
8 paragraph 28 reflect the intent of those with whom  
9 you worked while employed at AT&T?  
10 MR. GANT: Same objection, and, also,  
11 foundation. It calls for speculation and legal  
12 conclusions.  
13 THE WITNESS: Yes, I do.  
14 BY MR. MARRIOTT:  
15 Q. Would you take a look, please, at  
16 paragraph 29. You say there that, "I understand  
17 that plaintiff claims that IBM and Sequent have  
18 breached the IBM agreements and the Sequent  
19 agreements by improperly using, exporting,  
20 disclosing or transferring AIX and Dynix/PTX source  
21 code, irrespective of whether IBM or Sequent have  
22 disclosed any specific protected source code copied  
23 from the UNIX System V source code provided by AT&T  
24 or USL."  
25 What is the basis of your understanding

1 about what it is that the plaintiff in this  
2 litigation claims, Mr. Wilson?  
3 (DISCUSSION OFF THE RECORD)  
4 THE WITNESS: I think it's stated there.  
5 In other words -- and this is sort of what was  
6 related to me. That there was a -- that the  
7 plaintiff claimed that they could -- they were  
8 improperly distributing copies of their -- their  
9 system, because of its association with the UNIX  
10 System V products.  
11 BY MR. MARRIOTT:  
12 Q. Let me clarify my question a little. What  
13 I'm really just asking you is: Is whether -- have  
14 you read the Complaint in this case, Mr. Wilson?  
15 A. I have not.  
16 Q. For your understanding of what the  
17 plaintiff -- what the plaintiff claims here, you  
18 rely upon whom?  
19 A. When I discussed it with the -- when I was  
20 discussing preparing for this declaration with the  
21 attorneys.  
22 Q. When you say, "the attorneys," you're  
23 referring to what the IBM attorneys described to  
24 you as being the contentions made by the plaintiff;  
25 is that right?

<p style="text-align: right;">Page 77</p> <p>1 A. That's correct.</p> <p>2 Q. You say in paragraph 29, "In my view,</p> <p>3 these claims are inconsistent with the provisions</p> <p>4 of the IBM agreements and the Sequent agreements.</p> <p>5 I do not believe that anyone at AT&amp;T or USL</p> <p>6 intended these agreements to be construed in this</p> <p>7 way."</p> <p>8 For how long, Mr. Wilson, did you work</p> <p>9 with the AT&amp;T, UNIX licensing agreements?</p> <p>10 MR. GANT: I'm going to object to the</p> <p>11 question as vague. You quoted from a paragraph,</p> <p>12 and then you asked a seemingly unrelated question.</p> <p>13 So if you're intending to link them somehow, I'm</p> <p>14 going to object to that and object to the question</p> <p>15 as vague and lacking foundation.</p> <p>16 MR. MARRIOTT: Okay. Do you need the</p> <p>17 question read back?</p> <p>18 THE WITNESS: Yes.</p> <p>19 MR. GANT: Stipulate the same objections;</p> <p>20 right, David?</p> <p>21 MR. MARRIOTT: I don't think we need to</p> <p>22 stipulate. Just so it's clear, I think they're on</p> <p>23 the record. So when she repeats the question, she</p> <p>24 doesn't re-type it. So --</p> <p>25 (PREVIOUS QUESTION THEN READ)</p>	<p style="text-align: right;">Page 79</p> <p>1 except for any protected UNIX System V source code</p> <p>2 provided by AT&amp;T or USL actually included in them,</p> <p>3 because they are owned by the licensees?</p> <p>4 MR. GANT: Same objections.</p> <p>5 THE WITNESS: Yes. I believe that to be</p> <p>6 true.</p> <p>7 BY MR. MARRIOTT:</p> <p>8 Q. In paragraph 30 of your declaration you</p> <p>9 state, "In my view, any claim that the IBM software</p> <p>10 agreement and the Sequent software agreement</p> <p>11 prohibit the use, export, disclosure or transfer of</p> <p>12 any code other than UNIX System V code is clearly</p> <p>13 wrong. Not only did we at AT&amp;T not intend the</p> <p>14 agreements to be read that way, but we also went</p> <p>15 out of our way to assure our licensees that that is</p> <p>16 not what the agreements meant."</p> <p>17 Is that an accurate statement?</p> <p>18 MR. GANT: Same objections.</p> <p>19 THE WITNESS: Yes. Yes, it is.</p> <p>20 BY MR. MARRIOTT:</p> <p>21 Q. And, finally, in paragraph 31, Mr. Wilson,</p> <p>22 you state that all of the statements made in your</p> <p>23 declaration in Exhibit 76 are made under penalty of</p> <p>24 perjury; is that right?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 78</p> <p>1 (DISCUSSION OFF THE RECORD)</p> <p>2 BY MR. MARRIOTT:</p> <p>3 Q. Okay. During what period of time,</p> <p>4 Mr. Wilson, did you -- did you work with the AT&amp;T,</p> <p>5 UNIX licensing agreements?</p> <p>6 MR. GANT: Objection. Vague.</p> <p>7 THE WITNESS: Through the period of 1980</p> <p>8 through 1991.</p> <p>9 BY MR. MARRIOTT:</p> <p>10 Q. And based upon your having worked with</p> <p>11 those agreements during that period do you believe</p> <p>12 that anyone at AT&amp;T or USL intended those</p> <p>13 agreements to be construed in the way described in</p> <p>14 paragraph 29 as being the claim of the plaintiff in</p> <p>15 this litigation?</p> <p>16 MR. GANT: Objection. Leading, vague,</p> <p>17 compound, lack of foundation, calls for speculation</p> <p>18 and for legal conclusions.</p> <p>19 THE WITNESS: I do not.</p> <p>20 BY MR. MARRIOTT:</p> <p>21 Q. To the best of your understanding, is it</p> <p>22 an accurate statement that modifications and</p> <p>23 derivative works under these AT&amp;T, UNIX licensing</p> <p>24 agreements are not subject to the confidentiality</p> <p>25 and other restrictions contained in the agreements,</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. MARRIOTT: Okay. Should we take a</p> <p>2 break?</p> <p>3 THE VIDEOGRAPHER: One moment, please.</p> <p>4 This marks the end of tape number one in</p> <p>5 the deposition of Otis Wilson. Going off the</p> <p>6 record. The time is 10:57 a.m.</p> <p>7 (RECESS TAKEN AT 10:57 A.M. TO 11:21 A.M.)</p> <p>8 THE VIDEOGRAPHER: Back on the record.</p> <p>9 Here marks the beginning of tape number two in the</p> <p>10 deposition of Otis Wilson. The time is 11:21 a.m.</p> <p>11 Please, continue.</p> <p>12 BY MR. MARRIOTT:</p> <p>13 Q. Mr. Wilson, I hand you what has been</p> <p>14 previously marked as Exhibit 77, which I believe is</p> <p>15 a copy of the subpoena served on you in -- in</p> <p>16 connection with this matter. Could you, please,</p> <p>17 just tell me if that's the subpoena served on you</p> <p>18 and whether you're appearing pursuant to the</p> <p>19 subpoena?</p> <p>20 A. Yes, it is, and I am.</p> <p>21 Q. Thank you, sir.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Let me now show you what I've previously</p> <p>24 marked as Exhibit 78, which is a copy of a letter</p> <p>25 sent from me to you on April 6th, 2004. Would you</p>

1 take a look at that, please, and tell me if you've  
2 seen that before?  
3 A. Yes, I have.  
4 Q. Would you just take a look in particular  
5 at paragraph two and tell me whether that reflects  
6 the circumstances under which you came to be  
7 represented by -- by my law firm?  
8 A. Yes.  
9 Q. Okay.  
10 MR. GANT: Yes, you can tell him, or, yes,  
11 it is?  
12 THE WITNESS: Yes, it is.  
13 MR. MARRIOTT: Thank you.  
14 BY MR. MARRIOTT:  
15 Q. Let me direct your attention now, if I  
16 may, Mr. Wilson, to Exhibit 75, which has been  
17 previously marked. This is, I believe, a copy of  
18 your declaration, dated December 11, 2003?  
19 A. That's correct.  
20 Q. How did you come to sign this declaration, "  
21 Mr. Wilson?  
22 MR. GANT: Objection. Vague.  
23 THE WITNESS: This -- this is what I was  
24 asked to sign.  
25 (MR. DAVIS THEN EXITED THE ROOM)

1 Q. And you signed it, because you believe  
2 it's true and correct?  
3 MR. GANT: Objection. Leading, vague,  
4 compound.  
5 Q. Why did you sign the declaration,  
6 Mr. Wilson?  
7 A. This -- it represented the declaration I  
8 made, and it's been written up, and I agree with  
9 it, and so I signed it after reading it.  
10 MR. GANT: Could you read back the answer,  
11 and if David would like the question too, that's  
12 fine.  
13 MR. MARRIOTT: Sure.  
14 MR. GANT: Thank you.  
15 (REQUESTED PORTION OF THE RECORD READ)  
16 BY MR. MARRIOTT:  
17 Q. Let me direct your attention, please, to  
18 paragraph six of the declaration.  
19 A. Okay.  
20 Q. A reference is made here to methods or  
21 concepts. I believe you testified earlier that  
22 that's a term with which you're familiar. Do you  
23 recall that testimony?  
24 MR. MARRIOTT: I'm on page six, at  
25 paragraph 14, for example.

1 MR. GANT: Okay. I thought you said  
2 paragraph six. I think you did, which is why I  
3 couldn't find it.  
4 MR. MARRIOTT: I apologize. It's  
5 paragraph six, page 14.  
6 BY MR. MARRIOTT:  
7 Q. A reference is made there on page six,  
8 paragraph 14 to methods or concepts. Is that a  
9 term with which you're familiar, Mr. Wilson?  
10 A. Yes, it is.  
11 (MR. DAVIS THEN RE-ENTERED THE ROOM)  
12 Q. And what rights as you understand IBM's  
13 UNIX licensing agreements with AT&T does IBM have  
14 with respect to the methods or the concepts of UNIX  
15 System V?  
16 MR. MARRIOTT: Could I have the question  
17 read back?  
18 (PREVIOUS QUESTION THEN READ)  
19 MR. GANT: Are you sticking --  
20 MR. MARRIOTT: Let me restate the  
21 question.  
22 MR. GANT: Okay.  
23 BY MR. MARRIOTT:  
24 Q. You're familiar with the term methods or  
25 concepts; right?

1 A. Yes, I am.  
2 Q. As you understand IBM's UNIX licensing --  
3 licensing agreements with AT&T, what rights does  
4 IBM have with respect to the methods and concepts  
5 of UNIX?  
6 MR. GANT: Objection. Vague, compound,  
7 lack of foundation, calls for speculation and legal  
8 conclusions.  
9 THE WITNESS: Of -- the phrase methods and  
10 concepts was deleted from the IBM software  
11 agreements.  
12 MR. GANT: Objection. Move to strike as  
13 nonresponsive.  
14 BY MR. MARRIOTT:  
15 Q. Do you have an understanding, Mr. Wilson,  
16 as to whether the term methods or concepts was  
17 deleted from IBM's licensing agreements with AT&T?  
18 MR. GANT: Objection. Foundation, calls  
19 for speculation and legal conclusions.  
20 THE WITNESS: Yes, it was deleted.  
21 BY MR. MARRIOTT:  
22 Q. Okay. And what is your understanding as  
23 to why it was deleted?  
24 MR. GANT: Same objection, as in vague.  
25 THE WITNESS: It was no longer applicable.

1 The -- there was nothing that we could really  
2 define as methods and concepts at this time that  
3 would be -- would be protected. So we just removed  
4 it from the agreement.

5 BY MR. MARRIOTT:

6 Q. Is there anything, to your understanding,  
7 that IBM cannot do properly with respect to UNIX  
8 methods or concepts?

9 MR. GANT: Objection. Leading, vague,  
10 foundation, compound, calls for speculation and  
11 legal conclusions.

12 THE WITNESS: However you might want to  
13 define methods and concepts, it just was no longer  
14 applicable to the IBM software agreement. So  
15 anything contained therein that might be considered  
16 a method or concept is -- is no longer applicable.

17 BY MR. MARRIOTT:

18 Q. As you understand AT&T's intent, at least  
19 by the time you left the company, did AT&T seek to  
20 enforce rights to methods or concepts of UNIX as  
21 they related to any of its licensees?

22 MR. GANT: Objection. Leading, vague,  
23 compound, lack of foundation, calls for speculation  
24 and for legal conclusions.

25 THE WITNESS: We did not.

1 BY MR. MARRIOTT:

2 Q. Would you take a look, please, Mr. Wilson,  
3 at paragraphs 12 through 15 of your declaration  
4 that appears in Exhibit 75, and read those to  
5 yourself and tell me when you've had the  
6 opportunity to do that?

7 MR. GANT: That was 12 through 15?

8 MR. MARRIOTT: Yes.

9 THE WITNESS: Okay.

10 BY MR. MARRIOTT:

11 Q. Is there anything about the content of  
12 paragraphs 12 through 15 that you would change,  
13 Mr. Wilson?

14 MR. GANT: Objection. Vague, compound,  
15 lack of foundation.

16 THE WITNESS: I would not.

17 BY MR. MARRIOTT:

18 Q. Paragraph 16 of your declaration states  
19 that, "IBM had no confidentiality obligation with  
20 respect to any UNIX System V information, other  
21 than to refrain from disclosing the actual UNIX  
22 System V source code provided by AT&T and USL, and  
23 to refrain from referring to that source code while  
24 developing or providing products or services. IBM  
25 was free to use and disclose any of the ideas,

1 concepts, know-how, methods or techniques embodied  
2 in the software products."

3 Why did you say that, Mr. Wilson?

4 MR. GANT: Objection. Vague and leading.

5 THE WITNESS: In reading this again, it's  
6 probably a little -- it's -- it's clear to me, but  
7 I can see if someone else is reading it -- because  
8 it says -- a clarification of this -- this  
9 statement here.

10 BY MR. MARRIOTT:

11 Q. Sure. How would you clarify the contents  
12 of paragraph 16?

13 A. Paragraph 16 is -- where it picks up,  
14 "other than to refrain from disclosing the actual  
15 UNIX System V source code," that should really be,  
16 "software product."

17 Q. Okay. Is there anything else about  
18 paragraph 16 that you would change for  
19 clarification?

20 A. I would not.

21 (DISCUSSION OFF THE RECORD)

22 BY MR. MARRIOTT:

23 Q. In paragraph 17 you say, "I did not view  
24 these changes," referring to the changes made by  
25 the side letter referenced in the preceding

1 paragraphs, "as substantive. They were all  
2 clarifications.

3 "Even though we may have" -- "have entered  
4 into side letters or other agreements with a number  
5 of licensees that clarified the confidentiality  
6 restrictions and other provisions in the standard  
7 software agreement, my intent was always to treat  
8 all licensees the same."

9 Why was it your intent to treat all  
10 licensees the same, Mr. Wilson?

11 MR. GANT: Objection. Vague, compound,  
12 lack of foundation.

13 THE WITNESS: We were very careful to make  
14 sure that all licensees and all licensing  
15 agreements were the same for -- for all of our  
16 licensees.

17 In other words, they were -- it was just a  
18 matter of policy that no -- any -- any right or  
19 clarification that we would give to any one  
20 licensee, we would give to all of our licensees.

21 BY MR. MARRIOTT:

22 Q. In -- in the following sections of 17 you  
23 say, "In fact, clarifications provided to  
24 particular licensees in side letters were generally  
25 shared with other licensees through informal



1 interpretive guidance that was provided either  
2 orally or in writing.  
3 "In any event," you say, "our intent was  
4 always to treat all licensees equally, so that  
5 relief from the confidentiality restrictions  
6 provided to one licensee in a side letter benefited  
7 all licensees."

8 Does that accurately reflect your practice  
9 while you were employed at AT&T?

10 MR. GANT: Objection. Vague, compound,  
11 leading, lack of foundation, calls for speculation  
12 and for legal conclusions.

13 THE WITNESS: Yes, it does.

14 BY MR. MARRIOTT:

15 Q. It's not my intent, at present at least,  
16 Mr. Wilson, to -- to inquire specifically as to  
17 every paragraph of your declaration in Exhibit 75.

18 Can you tell me whether as you view  
19 Exhibit 75 there's anything inconsistent in  
20 Exhibit 75 and Exhibit 76?

21 MR. GANT: You're referring to the  
22 declarations at the front of each? You already  
23 established that's what you're referring to. So --

24 MR. MARRIOTT: I'm happy to clarify.

25 BY MR. MARRIOTT:

1 related information, Mr. Wilson?

2 MR. GANT: Objection. Leading, vague,  
3 compound, lack of foundation, calls for speculation  
4 and for legal conclusions.

5 THE WITNESS: We were trying to establish  
6 the operating system as a -- as an industry  
7 standard, and so we wanted to distribute it to both  
8 universities and licensees, non-university  
9 licensees in order to -- for that objective.

10 BY MR. MARRIOTT:

11 Q. You say in -- in paragraph 29 that, "we  
12 believed that our licensees held the same view."  
13 What's the basis of your statement there, that your  
14 licensees shared your same view with respect to the  
15 content of paragraph 29?

16 MR. GANT: Objection. Vague, lack of  
17 foundation, calls for speculation.

18 THE WITNESS: Just the -- the activity  
19 that was associated with the software products,  
20 especially UNIX System V, the operating system.  
21 And the emergence of a very, very large user group  
22 and the evolution from the academic community into  
23 the commercial area with regard to that particular  
24 software product. It was like an explosion.

25 MR. GANT: Move to strike as

1 Q. I don't intend specifically to take you  
2 through each of the paragraphs of -- of your  
3 exhibit -- of your declaration, which appears in  
4 Exhibit 75. Are Exhibits 75 and 76 consistent, to  
5 the best of your understanding?

6 MR. GANT: Objection. Vague.

7 THE WITNESS: Yes, they are.

8 BY MR. MARRIOTT:

9 Q. Let me direct your attention, please, to  
10 page 12 of your declaration in Exhibit 75,  
11 paragraph 29 specifically. Would you read that  
12 paragraph into the record, please?

13 A. "As discussed above, because AT&T and USL  
14 intended to widely distribute UNIX System V source  
15 code and related information, we understood that it  
16 would be difficult to require that the code and  
17 related information be kept confidential.

18 "Since we believed that our licensees held  
19 the same view, the standard software agreements  
20 provided that a licensee would not be required to  
21 keep a software product confidential if it became  
22 available without restriction to the general  
23 public."

24 Q. Why did AT&T and USL intend widely to  
25 distribute the UNIX System V source code and

1 nonresponsive.

2 BY MR. MARRIOTT:

3 Q. To what extent, Mr. Wilson, did you  
4 interact with AT&T's licensees concerning licensing  
5 matters?

6 MR. GANT: Objection. Vague, foundation.

7 THE WITNESS: Read the question back,  
8 please.

9 (PREVIOUS QUESTION THEN READ)

10 THE WITNESS: Oh, I was intimately  
11 involved with our licensees. In other words,  
12 everything from discussing software product  
13 attributes, licensing agreements, licensing policy,  
14 participating in their user group in the way of  
15 presentations.

16 BY MR. MARRIOTT:

17 Q. In paragraph 30 you state, "I understood  
18 section 7.06(a) to mean that the licensee was free  
19 to disclose, without any restriction whatsoever,  
20 any information that became available without  
21 restriction to the general public by acts not  
22 attributable to that particular licensee."

23 Do you see that?

24 A. Yes, I do.

25 Q. And does that reflect your understanding

<p style="text-align: right;">Page 93</p> <p>1 of AT&amp;T's meaning with respect to that provision?</p> <p>2 MR. GANT: Objection. Vague, compound,</p> <p>3 lack of foundation, calls for speculation and for</p> <p>4 legal conclusions.</p> <p>5 THE WITNESS: Yes, it does.</p> <p>6 BY MR. MARRIOTT:</p> <p>7 Q. In paragraph 31 a reference is made to</p> <p>8 trade secrets and efforts to protect trade secrets.</p> <p>9 Can you explain what you mean by that, please?</p> <p>10 A. The vehicle that we use for licensing our</p> <p>11 software products was -- was a trade secret, as</p> <p>12 opposed to other protective means that we could</p> <p>13 have adopted. We used the trade secret provisions</p> <p>14 of our -- I guess of the licensing law they used to</p> <p>15 protect our software product.</p> <p>16 Q. You say in the last sentence of paragraph</p> <p>17 31, you did not intend to impose a confidentiality</p> <p>18 obligation beyond what we could enforce under trade</p> <p>19 secret law. Why do you say that, sir?</p> <p>20 MR. GANT: Objection. Vague and lack of</p> <p>21 foundation. Calls for speculation and for legal</p> <p>22 conclusions.</p> <p>23 THE WITNESS: Because that was our</p> <p>24 intention. We did not intend to go anywhere beyond</p> <p>25 what -- what covenants were provided to us under</p>	<p style="text-align: right;">Page 95</p> <p>1 Q. Take a look, if you would, at the second</p> <p>2 sentence, please, Mr. Wilson. There you say, "I</p> <p>3 believe that the UNIX System V source code, or any</p> <p>4 part thereof, would be available without</p> <p>5 restriction to the general public, if, for example,</p> <p>6 it were published by a party other than the</p> <p>7 licensee in question, accessible outside the limits</p> <p>8 of a confidentiality agreement, such as for</p> <p>9 download from the internet, available because its</p> <p>10 owner, whether AT&amp;T, USL or successors, failed,</p> <p>11 even if by inadvertence or simple negligence, to</p> <p>12 take sufficient precautions to ensure that it would</p> <p>13 remain confidential, distributed so widely that</p> <p>14 contractual confidentiality restrictions would be</p> <p>15 insufficient to maintain confidentiality, made</p> <p>16 available to a third party, who had the right to</p> <p>17 disclose the software product, or any part thereof,</p> <p>18 or distributed under an open-source license, like</p> <p>19 the GNU, "G-N-U, "General Public License, and the</p> <p>20 GPL."</p> <p>21 Does that list of examples reflect ways in</p> <p>22 which you believe material may become available</p> <p>23 without restriction to the general public within</p> <p>24 the meaning of the software agreements of AT&amp;T</p> <p>25 concerning UNIX?</p>
<p style="text-align: right;">Page 94</p> <p>1 these software agreements using the trade secret</p> <p>2 protections.</p> <p>3 BY MR. MARRIOTT:</p> <p>4 Q. In paragraph 32 you state that, "We never</p> <p>5 attempted to list all the ways in which source code</p> <p>6 could become available without restriction to the</p> <p>7 general public within the meaning of the software</p> <p>8 and related agreements."</p> <p>9 Is that accurate?</p> <p>10 MR. GANT: Objection. Vague, compound,</p> <p>11 mischaracterizes the document, calls for</p> <p>12 speculation and for legal conclusions.</p> <p>13 THE WITNESS: Yes, it is.</p> <p>14 MR. MARRIOTT: Could I just have my</p> <p>15 question read back for the fun of it.</p> <p>16 (PREVIOUS QUESTION THEN READ)</p> <p>17 MR. GANT: I withdraw the assertion of a</p> <p>18 mischaracterization. I thought you said, "you,"</p> <p>19 and not, "we." I withdraw that.</p> <p>20 MR. MARRIOTT: Thank you. Well, I'm</p> <p>21 always sensitive to being said to mischaracterize</p> <p>22 things.</p> <p>23 MR. GANT: I withdraw that one. I'm glad</p> <p>24 you had it read back. The other objections stand.</p> <p>25 BY MR. MARRIOTT:</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. GANT: Objection. Leading, vague,</p> <p>2 compound, lack of foundation, calls for speculation</p> <p>3 and for legal conclusions.</p> <p>4 THE WITNESS: Yes, I do.</p> <p>5 BY MR. MARRIOTT:</p> <p>6 Q. Let me just ask you, please, to read to</p> <p>7 yourself -- and take whatever time you feel you</p> <p>8 need -- paragraphs 33 through 42, and I just want</p> <p>9 to ask you whether having read them anew today</p> <p>10 there's anything about that you want to change or</p> <p>11 clarify?</p> <p>12 A. (THE WITNESS COMPLIED)</p> <p>13 Okay.</p> <p>14 MR. GANT: I don't think there's a</p> <p>15 question pending.</p> <p>16 Q. Oh, there's a question pending -- if there</p> <p>17 isn't, I'll make one pending. The question is,</p> <p>18 whether there's anything about the paragraphs that</p> <p>19 you've just read that upon re-review you'd change</p> <p>20 or you'd modify, in any way?</p> <p>21 A. No.</p> <p>22 Q. Let me direct your attention, please,</p> <p>23 Mr. Wilson, to paragraph 34. There you referred to</p> <p>24 the wide distribution of source code to</p> <p>25 universities. Could you just explain briefly why</p>

1 it is AT&T undertook to distribute source code  
2 widely to universities?  
3 MR. GANT: I am going to object to that as  
4 a mischaracterization of the document, and then  
5 I'll add other objections, if you want.  
6 MR. MARRIOTT: Okay. Well, let me -- I  
7 certainly didn't mean to mischaracterize it. So  
8 let me -- let me try to fix what you may find  
9 problematic with it.  
10 BY MR. MARRIOTT:  
11 Q. Paragraph 34 states, "One purpose of  
12 distributing the source code to universities was to  
13 promote the wide adoption of UNIX operating systems  
14 by ensuring the UNIX System V ideas, concepts  
15 know-how, methods and techniques would be widely  
16 known and understood by future programmers."  
17 Why is that, Mr. Wilson?  
18 MR. GANT: Objection. Vague, compound,  
19 lack of foundation, calls for speculation.  
20 THE WITNESS: Well, those students, being  
21 exposed to the operating system, in turn go out and  
22 propagate the system through commercial pursuits  
23 they may pursue after college, and so it was a --  
24 it was a good way to get programmers and students  
25 familiar with the operating system.

1 BY MR. MARRIOTT:  
2 Q. And why was it of interest to you to make  
3 other people familiar with the system?  
4 MR. GANT: Objection. Vague, compound.  
5 THE WITNESS: Because there was a  
6 commercial aspect to that. Once you were --  
7 something that you were familiar with in college,  
8 you could -- once you graduated and went into  
9 business, it was a natural vehicle that you'd  
10 return to. And that showed itself in the number of  
11 commercial licensees that we eventually had  
12 associated with the product.  
13 BY MR. MARRIOTT:  
14 Q. In paragraph 36 you say that, "AT&T  
15 intended UNIX to be an open operating system,  
16 meaning that customers would not be locked in with  
17 a particular hardware vendor or a particular  
18 operating system vendor."  
19 Could you just explain further, please,  
20 what you mean by AT&T having intended UNIX to be an  
21 open operating system?  
22 A. Well, inherent in the design of the UNIX  
23 operating system software was that it was hardware  
24 independent, and so it was designed such that it  
25 could be easily ported from one hardware

1 manufacturer machine to another.  
2 And so, thereby, minimizing the -- the  
3 expense associated with moving those applications  
4 over that were associated with the operating  
5 system, but also giving the -- the customer the --  
6 the end user customer the right to be able to pick  
7 different vendors without worrying about their  
8 installed software base being able to operate on  
9 that new hardware.  
10 Q. In paragraph 37 you refer to the Lions'  
11 Commentary. Have you actually read the Lions' --  
12 or I shouldn't say read. Have you -- have you  
13 actually -- one doesn't necessarily read source  
14 code, but have you -- are you familiar with the  
15 Lions' Commentary?  
16 MR. GANT: Objection. Vague.  
17 THE WITNESS: Yes, I am.  
18 BY MR. MARRIOTT:  
19 Q. In paragraph 38 you say that you  
20 understand that plaintiff has made certain UNIX  
21 source code available for download without charge  
22 on the internet. What's the basis of your  
23 understanding that the plaintiff has made UNIX  
24 source code available for download without charge  
25 on the internet?

1 MR. GANT: Objection. Foundation,  
2 leading.  
3 THE WITNESS: That was based on my -- my  
4 conversations with -- with counsel about this --  
5 this particular Complaint.  
6 BY MR. MARRIOTT:  
7 Q. And to just clarify, when you say,  
8 "conversations with counsel" --  
9 A. Counsel.  
10 Q. -- you don't have personal knowledge as  
11 to what --  
12 A. No.  
13 Q. -- plaintiff has or hasn't made available  
14 for download?  
15 A. I do not.  
16 THE WITNESS: Excuse me. Quick answer.  
17 MR. GANT: He took my question. So,  
18 please, answer it.  
19 BY MR. MARRIOTT:  
20 Q. In paragraph 39 you refer to, AT&T Capital  
21 Corp., then a subsidiary of AT&T, having sold  
22 thousands of used or discontinued AT&T computer  
23 systems, some of which included UNIX System V  
24 source code, and AT&T -- that AT&T did not impose  
25 confidentiality restrictions on. You say there

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1 that you were told that. Do you have personal  
 2 knowledge of that as well, sir?  
 3 A. I do not.  
 4 Q. And while you were at AT&T did you -- did  
 5 you ever discuss with anyone AT&T Capital Corp.'s  
 6 having made computer systems available in the  
 7 marketplace, which included source code?  
 8 MR. GANT: Objection. Vague and compound.  
 9 THE WITNESS: Yes. I did have some  
 10 conversations with regard to that.  
 11 BY MR. MARRIOTT:  
 12 Q. Could you just, please, generally describe  
 13 those conversations?  
 14 A. Pretty much --  
 15 MR. GANT: Same objections.  
 16 THE WITNESS: Okay. Pretty much what's  
 17 stated here. I was told, you know, probably in the  
 18 next best of terms that someone had let software --  
 19 had let machines go and had not cleaned off the  
 20 hard drives and removed all of the stuff that was  
 21 on there.  
 22 BY MR. MARRIOTT:  
 23 Q. So when you say -- when you said in your  
 24 previous answer that you didn't have personal  
 25 knowledge, you meant that you didn't actually see

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1 the person do it, but you discussed that while you  
 2 were with AT&T with others at AT&T --  
 3 MR. GANT: Objection.  
 4 Q. -- is that right?  
 5 MR. GANT: Objection. Leading, vague,  
 6 compound, lack of foundation.  
 7 THE WITNESS: Yes.  
 8 MR. MARRIOTT: I can withdraw the  
 9 question.  
 10 BY MR. MARRIOTT:  
 11 Q. I'm just interested in understanding what  
 12 you -- you said that you didn't have personal  
 13 knowledge. That you had discussions. Can you  
 14 explain what you mean by your testimony about not  
 15 having personal knowledge?  
 16 A. I didn't distribute any machines or  
 17 dispose of the machines myself, but I knew, because  
 18 of the relationship with the licensing aspect of  
 19 the source code -- I forget exactly who, but the  
 20 folks who were telling me said, well, AC Corp. made  
 21 these machines available, you know, with good  
 22 intentions, but failed to clean them up before they  
 23 let them go, and --  
 24 MR. GANT: Objection. Move to strike as  
 25 nonresponsive.

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1 Q. Would you take a look, please, at  
 2 paragraph 40, the last sentence. Would you just  
 3 read the last sentence to me, beginning with the  
 4 word, "IBM"?  
 5 MR. GANT: This is paragraph 40?  
 6 MR. MARRIOTT: The last sentence begins,  
 7 "As a result."  
 8 MR. GANT: Oh, okay.  
 9 THE WITNESS: Oh.  
 10 MR. MARRIOTT: I'm asking the witness to  
 11 read where it begins, "IBM."  
 12 MR. GANT: I think you left out, "As a  
 13 result."  
 14 THE WITNESS: "As a result, IBM may  
 15 properly disclose any such UNIX System V ideas,  
 16 concepts, know-how, methods and techniques to  
 17 anyone at any time without restriction. They are,  
 18 thus, available without restriction to the general  
 19 public."  
 20 BY MR. MARRIOTT:  
 21 Q. Is that your understanding of the software  
 22 agreement, Mr. Wilson?  
 23 MR. GANT: Objection. Leading, vague,  
 24 compound, lack of foundation, calls for speculation  
 25 and for legal conclusions.

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1 THE WITNESS: Yes, it is.  
 2 Q. In paragraph 41 you make reference to a  
 3 license known as the GPL. Are you an expert with  
 4 respect to the GPL, Mr. Wilson?  
 5 A. No, I'm not. It's --  
 6 Q. Well, what's your understanding of what  
 7 the -- this GPL is?  
 8 MR. GANT: Objection. Foundation, vague.  
 9 THE WITNESS: I'm looking at it. It's  
 10 just a -- it's an example of an open license  
 11 agreement, which there is probably many different  
 12 kinds out there, but this is just an example.  
 13 BY MR. MARRIOTT:  
 14 Q. Let me ask you, please, to just take a  
 15 look at paragraphs 43 through 46, and then I'll ask  
 16 a question for you about those, and perhaps several  
 17 questions for you about those?  
 18 A. I read that earlier.  
 19 Q. Oh, you read all of the way to the end?  
 20 A. Yes.  
 21 Q. Well, thank you very much.  
 22 Is there anything about 43 through 47 that  
 23 you'd change?  
 24 A. No.  
 25 Q. Did you actually write the declarations

1 that are Exhibits -- that are included in  
2 Exhibits 75 and 76, Mr. Wilson?  
3 A. Of course -- no. No, I didn't.  
4 Q. Okay. And who -- who, to your  
5 understanding, prepared the documents that are --  
6 that are your declarations in Exhibits 75 and 76?  
7 A. They were prepared by the -- the attorneys  
8 referenced on the first page with -- and I reviewed  
9 them before signing them.  
10 Q. Okay. Though you didn't draft these,  
11 Mr. Wilson, do you, nevertheless, endorse the  
12 content of these, as if it were your own?  
13 MR. GANT: Objection. Leading, vague,  
14 foundation.  
15 THE WITNESS: Yes, I do.  
16 MR. GANT: Could you read back the Q and  
17 A, please.  
18 (REQUESTED PORTION OF THE RECORD READ)  
19 MR. MARRIOTT: Let me -- the question is  
20 not a very good question. I can withdraw the  
21 question.  
22 MR. GANT: You are withdrawing it?  
23 MR. MARRIOTT: I'm withdrawing the  
24 question, and I'm going to restate it.  
25 BY MR. MARRIOTT:

1 Q. You didn't actually type up the contents  
2 of the declaration in Exhibit 76, did you?  
3 A. I did not.  
4 Q. You didn't actually type up the contents  
5 of the declaration in Exhibit 75, did you?  
6 A. I did not.  
7 Q. But you signed them, because you agree  
8 with them; correct?  
9 MR. GANT: Objection. Leading,  
10 foundation.  
11 THE WITNESS: I signed it, because I  
12 believe that this -- it's a true representation --  
13 representation of the declarations I've made.  
14 BY MR. MARRIOTT:  
15 Q. Did anyone, Mr. Wilson, on behalf of IBM  
16 or anyone else ask you to include in these  
17 declarations anything you believe to be untrue?  
18 MR. GANT: Could you read it back, please.  
19 (PREVIOUS QUESTION THEN READ)  
20 MR. GANT: Objection. Vague.  
21 THE WITNESS: They did not.  
22 BY MR. MARRIOTT:  
23 Q. Have you ever been employed by IBM,  
24 Mr. Wilson?  
25 A. I have not.

1 Q. Anyone in your family ever been employed  
2 by IBM?  
3 A. Not to my knowledge.  
4 Q. Have you ever been convicted of a crime,  
5 Mr. Wilson?  
6 A. I have not.  
7 Q. Ever been arrested?  
8 A. Yes.  
9 Q. And what were -- for what were you  
10 arrested, sir?  
11 A. It was a traffic situation.  
12 Q. A traffic violation?  
13 A. Uh-huh.  
14 MR. GANT: Objection. Leading,  
15 mischaracterizes the testimony.  
16 Q. Mr. Wilson, is there anything about what I  
17 said that you think mischaracterizes your  
18 testimony?  
19 MR. GANT: Would you like it read back?  
20 THE WITNESS: Yes.  
21 (PREVIOUS QUESTION THEN READ)  
22 (DISCUSSION OFF THE RECORD)  
23 (REQUESTED PORTION OF THE RECORD READ)  
24 BY MR. MARRIOTT:  
25 Q. Okay. Could you explain, please, what you

1 mean by, "a traffic situation"?  
2 A. I didn't agree with the arrest -- with the  
3 officer that stopped me.  
4 Q. And why were you stopped?  
5 A. Exceeding the speed limit.  
6 Q. Okay. And that's a traffic violation, is  
7 it not?  
8 A. Yes, it is.  
9 Q. How long ago was -- was your arrest,  
10 Mr. Wilson?  
11 A. Maybe 40 years ago.  
12 Q. Forty years ago?  
13 A. Forty years ago. Yeah.  
14 Q. Okay.  
15 MR. GANT: How many?  
16 THE WITNESS: Forty.  
17 MR. GANT: Four, zero?  
18 THE WITNESS: Uh-huh.  
19 BY MR. MARRIOTT:  
20 Q. Have you ever been arrested other than  
21 that?  
22 A. I have not.  
23 Q. Ever been convicted of any crime?  
24 A. I have not.  
25 Q. Have you received any gifts or

1 compensation from IBM in connection with this  
2 litigation?  
3 MR. GANT: Excluding lunch.  
4 THE WITNESS: I got lunch yesterday.  
5 MR. MARRIOTT: I think lunch is on behalf  
6 of the parties, as I understood the arrangement.  
7 MR. GANT: Lunch yesterday. I assume you  
8 fed him.  
9 THE WITNESS: I have not.  
10 BY MR. MARRIOTT:  
11 Q. What did you do to prepare for this  
12 deposition, Mr. Wilson?  
13 A. Oh, I read over my declarations. I looked  
14 at the -- the attached exhibits to refamiliarize  
15 myself with the information contained in them.  
16 Q. Did you look at anything besides the two  
17 exhibits and the retention letter that's  
18 Exhibit 78?  
19 A. I did not.  
20 Q. Do you have any personal stake in the  
21 outcome of this case, Mr. Wilson?  
22 MR. GANT: Objection. Vague, leading.  
23 THE WITNESS: I do not.  
24 BY MR. MARRIOTT:  
25 Q. And what's your understanding as to

1 who's -- who has agreed to pay the costs of your  
2 legal fees associated with your giving this  
3 deposition?  
4 A. That's covered in that -- I forget the  
5 exhibit. Which exhibit now?  
6 MR. GANT: 78.  
7 THE WITNESS: It's covered in Exhibit 78.  
8 BY MR. MARRIOTT:  
9 Q. And it's your understanding that IBM has  
10 agreed to cover your legal costs associated with  
11 the deposition?  
12 A. Yes, it is.  
13 Q. Has IBM's agreement to cover your legal  
14 costs in any way affected the truthfulness of the  
15 testimony you've given?  
16 A. It has not.  
17 MR. MARRIOTT: I'll try to fill the  
18 remaining few moments.  
19 MR. GANT: If you don't have questions,  
20 you can -- we can take a break and pass.  
21 MR. MARRIOTT: I have a few more  
22 questions.  
23 MR. GANT: Okay.  
24 BY MR. MARRIOTT:  
25 Q. You made reference earlier, Mr. Wilson, to

1 the exhibits appended to your declarations as tabs  
2 one through 10 and one through nine respectively of  
3 Exhibits 76 and 75. Do you recall that testimony?  
4 MR. GANT: I think you've got it  
5 backwards, but --  
6 MR. MARRIOTT: I don't think so. Well,  
7 let me withdraw it and try again, in case I do.  
8 BY MR. MARRIOTT:  
9 Q. Do you recall referring earlier to the  
10 exhibits appended to your declarations?  
11 A. Yes, I do.  
12 Q. Did you sign or -- or have signed on your  
13 behalf the UNIX licensing agreements between IBM  
14 and AT&T and AT&T and Sequent Computer Systems?  
15 MR. GANT: Object -- no objection yet.  
16 I'd like to hear it again, please.  
17 MR. MARRIOTT: Sure.  
18 (PREVIOUS QUESTION THEN READ)  
19 MR. GANT: Objection. Vague, compound.  
20 THE WITNESS: Yes.  
21 BY MR. MARRIOTT:  
22 Q. Do you think that there's anyone more  
23 knowledgeable about AT&T's intent with respect to  
24 AT&T's UNIX licensing agreements than -- than are  
25 you?

1 MR. GANT: Objection. Leading, vague,  
2 compound, lack of foundation, calls for  
3 speculation.  
4 THE WITNESS: With regard to the licensing  
5 agreements themselves, the intent behind the  
6 language and the -- and the distribution of the  
7 software products associated with those licensing  
8 agreements, I -- I believe I have as much knowledge  
9 as anyone in the -- than anybody associated with  
10 them. More than most.  
11 BY MR. MARRIOTT:  
12 Q. Would you agree, Mr. Wilson, that a lot of  
13 time has passed since you were employed at AT&T?  
14 A. It seems like it was just yesterday. No.  
15 It's -- yeah. It's been -- it's -- what, 14 years,  
16 13 years?  
17 Q. And are you -- are you at all concerned  
18 that the passage of time has clouded your memory as  
19 to the accuracy of the things stated in your  
20 declarations?  
21 MR. GANT: Objection. Leading, vague,  
22 compound.  
23 THE WITNESS: No. I believe, in going  
24 back and reviewing this -- it's something that we  
25 did for over a decade. I was surprised once I

1 started looking at it how quickly it all came back.  
 2 MR. MARRIOTT: I have no further questions  
 3 at this time.  
 4 (DISCUSSION OFF THE RECORD)  
 5 THE VIDEOGRAPHER: One moment, please.  
 6 Going off the record. The time is  
 7 12:05 p.m.  
 8 (RECESS TAKEN AT 12:05 P.M. TO 1:12 P.M.)  
 9 THE VIDEOGRAPHER: Back on the record.  
 10 The time is 1:12 p.m.  
 11 Please, continue.  
 12 MR. GANT: I just want to confirm that  
 13 you're done with your principal examination? It's  
 14 my turn?  
 15 MR. MARRIOTT: I think that's right.  
 16 Yeah. Go ahead.  
 17 CROSS-EXAMINATION  
 18 BY MR. GANT:  
 19 Q. Good afternoon, Mr. Wilson. As you know  
 20 when we -- when we met earlier this morning, my  
 21 name is Scott Gant, and I, along with my colleagues  
 22 here today, represent The SCO Group, the plaintiff  
 23 in this matter. Thank you for your time. We  
 24 appreciate your speaking with us today.  
 25 You were shown a copy of Exhibit 78 by

1 Q. Have you sought legal advice from them  
 2 with respect to any other matter?  
 3 A. I have not.  
 4 Q. Where are you currently employed?  
 5 A. I'm retired.  
 6 Q. Do you do any kind of work at all for pay?  
 7 A. Yes, I do.  
 8 Q. What's that?  
 9 A. I do -- I do some real estate development.  
 10 I do consulting in the area of diversity training  
 11 and also facility management -- facility management  
 12 at our church.  
 13 Q. Facility management. And you're  
 14 compensated for the facility management at the  
 15 church?  
 16 A. Yes. All three of those.  
 17 Q. Taking those three sets of activities  
 18 together, approximately how many hours a week do  
 19 you work?  
 20 A. Probably 50 hours a week.  
 21 Q. Fifty hours?  
 22 A. (WITNESS NODS HEAD UP AND DOWN)  
 23 Q. That doesn't sound retired to me.  
 24 So what did you mean when you said you  
 25 were retired?

1 Mr. Marriott. Do you recall that?  
 2 A. Yes, I do.  
 3 Q. Do you still have it in front of you?  
 4 A. I do now.  
 5 Q. And this document is consistent with your  
 6 testimony that the law firm of Cravath, Swaine &  
 7 Moore is representing you; is that correct?  
 8 A. That is correct.  
 9 Q. All right. Is it also correct that IBM is  
 10 paying Cravath, Swaine & Moore to work with you in  
 11 this case?  
 12 MR. MARRIOTT: Objection as to form.  
 13 THE WITNESS: Correct.  
 14 BY MR. GANT:  
 15 Q. Does Exhibit 78 accurately describe the  
 16 terms of your retention of Cravath, Swaine & Moore?  
 17 A. Yes, it does.  
 18 Q. And is it the case that May 6, 2004 was  
 19 the effective date of your retention of Cravath,  
 20 Swaine & Moore?  
 21 A. Yes, it is.  
 22 Q. Has Cravath, Swaine & Moore represented  
 23 you in any other matters aside from in connection  
 24 with this case?  
 25 A. They have not.

1 A. I can go home whenever I -- I deem it  
 2 necessary to go home. Whether it be for a day or a  
 3 month or whatever. So I'm officially retired. I  
 4 mean that's -- so I do these things out of a civic  
 5 responsibility.  
 6 I do get paid, but it was motivation by  
 7 the civic and also by a conversion I went through  
 8 in the early '90s with regard to the church, and so  
 9 I feel obligated to be there.  
 10 Q. A religious conversion?  
 11 A. Yes.  
 12 Q. Let's take the last calendar year, 2003,  
 13 as an example. How much income did you derive from  
 14 the three activities that you've identified?  
 15 A. Oh, about \$70,000.  
 16 Q. Seven, zero --  
 17 A. Uh-huh.  
 18 Q. -- thousand?  
 19 Are you affiliated with some kind of  
 20 entity or organization with respect to your real  
 21 estate development work?  
 22 A. No, I'm not.  
 23 Q. Do you do it on your own?  
 24 A. Yes.  
 25 Q. Are you a real estate agent?

<p style="text-align: right;">Page 117</p> <p>1 A. No. I'm a developer. In other words,  2 I -- I partner with different organizations. Like  3 if we're going to do senior housing, I may be able  4 to group a partner with it. Those types of things.  5 So there's different people that come into the  6 process, but I do it on my own.  7 Q. And what role exactly do you serve in  8 those activities?  9 A. Putting together the package.  10 Q. Bringing the parties together?  11 A. Right.  12 Q. And what's the nature of the consulting  13 work that you do? Did you mention diversity  14 training?  15 A. Diversity training, and also with the --  16 with regard to the real estate, and a good deal --  17 I spend a good deal of time doing civic work that I  18 mentioned earlier about -- with children, preparing  19 them to succeed in school.  20 Q. You mentioned that you left AT&amp;T in 1991;  21 is that correct?  22 A. That's correct.  23 Q. Where did you go from there?  24 A. Stayed right here in Greensboro. In other  25 words, I retired here in Greensboro.</p>	<p style="text-align: right;">Page 119</p> <p>1 A. It is now. Yeah. Her -- do you want her  2 maiden name?  3 Q. I just wanted to know if she goes by  4 something else?  5 A. No. No hyphenated name. No. She --  6 Linda R. Wilson.  7 Q. And how many times were you previously  8 married?  9 A. Twice.  10 Q. Okay. Could you tell me the names of your  11 ex-wives and when you married and divorced each of  12 them, please?  13 MR. MARRIOTT: Is this really relevant?  14 MR. GANT: If you have an objection, you  15 can --  16 MR. MARRIOTT: Well, I just think it's --  17 it's irrelevant, but, you know, go ahead. I don't  18 see why his marital status makes any difference.  19 BY MR. GANT:  20 Q. Could you tell me, sir?  21 A. Yeah. I can't remember the exact dates.  22 MR. MARRIOTT: I'm going to object as to  23 the form. Go ahead. You can answer.  24 Q. Can you tell me the names of your  25 ex-wives?</p>
<p style="text-align: right;">Page 118</p> <p>1 Q. So you retired in the sense that you just  2 described in 1991?  3 A. Yes.  4 Q. Was it at that point that you started to  5 undertake the three activities that you've just  6 described, real estate development, consulting and  7 facility development -- was it facilities --  8 A. Facility management.  9 Q. Management?  10 A. Uh-huh.  11 Q. Is that correct?  12 A. They evolved, you know. They weren't all  13 present at the -- early on. There was a couple of  14 years I didn't do anything.  15 Q. Are you married, sir?  16 A. Yes, I am.  17 Q. Is this your first marriage?  18 A. It's not.  19 Q. How long have you been married to your  20 current wife?  21 A. Eleven years.  22 Q. And what's her name, please?  23 A. Linda.  24 Q. What's her last name? Is it the same last  25 name as you?</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Yeah. Barbara.  2 MR. MARRIOTT: Objection as to the form.  3 Q. Go ahead, please?  4 A. Yeah. Barbara and Princess.  5 Q. And what were their maiden names, please?  6 MR. MARRIOTT: Objection as to form.  7 Maybe, just for clarification, can I have  8 an objection to the form to the entire line about  9 this, and I won't get in your way. I just don't  10 want -- I don't think this is relevant. So --  11 MR. GANT: That's fine.  12 MR. MARRIOTT: And I do think it's  13 otherwise objectional as to the form. So thank  14 you. Continuing objection.  15 THE WITNESS: Barbara Blakeley and  16 Princess Davenport.  17 BY MR. GANT:  18 Q. Thank you.  19 Have you ever been fired from a job?  20 A. I have not.  21 Q. Have you ever been subject to disciplinary  22 action in an employment setting?  23 A. I have not.  24 Q. You mentioned that you were in the  25 military; correct?</p>



1 A. Yes.  
 2 Q. And which branch of the armed services was  
 3 it?  
 4 A. The Air Force.  
 5 Q. The Air Force. And can you tell me the  
 6 years of your service in the Air Force?  
 7 A. From 1958 to 1962.  
 8 Q. And can you describe to me the  
 9 circumstances of your departure from the military?  
 10 A. Expiration of a four-year enlistment.  
 11 Q. Were you ever subject to any form of  
 12 reprimand or discipline while in the Air Force?  
 13 A. No, not that I recall.  
 14 Q. Have you ever declared bankruptcy?  
 15 A. I have not.  
 16 Q. Have you ever been a defendant in a civil  
 17 lawsuit?  
 18 A. No.  
 19 Q. Are you sure or -- you -- you were  
 20 hesitating. I just want to make sure that we're  
 21 not leaving anything out?  
 22 A. No, I have not.  
 23 Q. Have you ever been a plaintiff in a civil  
 24 lawsuit?  
 25 A. I have not.

1 Q. You mentioned earlier that you were once  
 2 arrested; is that correct?  
 3 A. That's correct.  
 4 Q. All right. And is it correct that that  
 5 was the only time that you were ever arrested?  
 6 A. Yes.  
 7 Q. Okay. And were you charged?  
 8 A. I don't recall that I was charged. I was  
 9 released the next morning.  
 10 Q. You were held overnight in jail?  
 11 A. Right, uh-huh.  
 12 Q. Although you don't remember if there was a  
 13 formal charge, or what it was, if there is one, can  
 14 you describe to me generally what you were arrested  
 15 for?  
 16 A. I didn't agree with the -- the arresting  
 17 officer, and I was -- I made my disagreement known  
 18 in a more vigorous way than I should have.  
 19 Q. How did you make your disagreement known?  
 20 A. We -- loud conversation back and forth.  
 21 Q. Was there any physical --  
 22 A. No.  
 23 Q. -- altercation?  
 24 A. No physical altercation.  
 25 Q. You were engaged in some kind of shouting

1 with the officer?  
 2 A. Yes, sir.  
 3 Q. All right. Do you think that your conduct  
 4 at that time was a mistake?  
 5 MR. MARRIOTT: Objection as to the form.  
 6 THE WITNESS: In retrospect, yes. Many  
 7 years ago.  
 8 BY MR. GANT:  
 9 Q. It was just an error in judgment that  
 10 everyone makes from time to time?  
 11 MR. MARRIOTT: Objection as to form.  
 12 THE WITNESS: Yes, and also youth.  
 13 BY MR. GANT:  
 14 Q. Youthful indiscretions?  
 15 A. Uh-huh.  
 16 Q. Have you ever had a lien or a judgment  
 17 entered against you?  
 18 A. I'm not sure. I'm really not sure about  
 19 that.  
 20 Q. Okay. It may -- it may be because you're  
 21 not familiar with some technical terms. So can you  
 22 describe to me what you're thinking of that might  
 23 have qualified as a yes to my question?  
 24 MR. MARRIOTT: Objection as to the form.  
 25 THE WITNESS: Okay. I think I had a -- I

1 had a -- a tax bill that was paid and removed. I  
 2 think there might have been a lien involved with  
 3 that, but I'm not sure.  
 4 BY MR. GANT:  
 5 Q. A tax bill to whom?  
 6 A. Guilford County.  
 7 Q. Did the county believe that you hadn't  
 8 made a full payment of taxes owed?  
 9 A. Yes.  
 10 MR. MARRIOTT: Objection as to form.  
 11 Q. When was that?  
 12 A. It may be four years ago.  
 13 Q. Approximately the year 2000?  
 14 A. Uh-huh, yes.  
 15 Q. Can you just describe to me the  
 16 circumstances surrounding that issue?  
 17 MR. MARRIOTT: Objection as to form.  
 18 THE WITNESS: There was a payment. The  
 19 payment was made, but it wasn't recorded properly  
 20 in the -- in the tax office, as best I can recall.  
 21 And then once they determined that that was the  
 22 case, they released it.  
 23 BY MR. GANT:  
 24 Q. Do you have any paperwork related to that  
 25 issue?

1 A. I may have. I'm not sure.  
 2 Q. Okay. Would you agree to retain that  
 3 paperwork in the event that we request it from you?  
 4 A. Sure.  
 5 Q. Thank you.  
 6 Have you ever had any other issues related  
 7 to payment of local, state or federal taxes?  
 8 MR. MARRIOTT: Objection as to form.  
 9 THE WITNESS: No.  
 10 BY MR. GANT:  
 11 Q. You're current and paid up in full with  
 12 your federal income tax?  
 13 A. I still have a payment due, because I  
 14 haven't done this year's taxes yet.  
 15 Q. Which tax year is that?  
 16 A. 2003.  
 17 Q. Do you plan to make a payment for that?  
 18 A. I plan to file before August.  
 19 Q. You haven't filed your taxes?  
 20 A. Right.  
 21 Q. Other than that, are you paid up in full  
 22 on your federal taxes?  
 23 A. To the best of my knowledge, yes.  
 24 Q. Is the same true for your state and local  
 25 taxes?

1 A. Yes.  
 2 Q. Do you declare on your income tax reports  
 3 all the income that you derive from your real  
 4 estate development work, consulting work and  
 5 facility management work?  
 6 A. Yes.  
 7 (MR. DAVIS THEN EXITED THE ROOM)  
 8 BY MR. GANT:  
 9 Q. Have you ever been deposed before today?  
 10 A. Yes, I have.  
 11 Q. How many times?  
 12 A. Oh, I'd say about -- between four and six.  
 13 I don't remember exactly. On different issues.  
 14 Q. I'll come back to that in a second, but I  
 15 assume Mr. Marriott has explained these things to  
 16 you, but I just want to make sure we're in  
 17 agreement on a couple of things.  
 18 You understand that you're still under  
 19 oath right now; correct?  
 20 A. Yes.  
 21 Q. And, I take it, you also understand that  
 22 you're obligated to give truthful, complete and  
 23 accurate answers to my questions. Do you  
 24 understand that?  
 25 A. Yes.

1 Q. And do you agree to do so?  
 2 A. Yes.  
 3 Q. Thank you.  
 4 Could you describe to me the circumstances  
 5 in which you were previously deposed?  
 6 A. They were -- it was in conjunction with  
 7 the licensing of software, the cases that I  
 8 remember.  
 9 Q. All of the occasions --  
 10 A. Right.  
 11 Q. -- you remember?  
 12 A. Right.  
 13 Q. Do you remember the disputes or the  
 14 litigation that was involved?  
 15 MR. MARRIOTT: You need to answer audibly.  
 16 THE WITNESS: No, I don't. I mean I -- I  
 17 have to think about it a little bit to recall, but  
 18 I know one happened early on, back in the early  
 19 '90s. And then there was a couple right before --  
 20 before I retired, but all concerning licensing  
 21 agreements, those kinds of things.  
 22 BY MR. GANT:  
 23 Q. Do you recall -- strike that.  
 24 Do you have copies of any of the  
 25 transcripts of your prior deposition testimony?

1 A. No, I do not.  
 2 Q. None of them at all?  
 3 A. No.  
 4 Q. Do you know if anyone does?  
 5 MR. MARRIOTT: Objection as to form.  
 6 THE WITNESS: I'm sure the -- the  
 7 attorneys and folks that were involved would have  
 8 copies.  
 9 BY MR. GANT:  
 10 Q. At AT&T?  
 11 A. Yes.  
 12 Q. Do you remember the names of any of those  
 13 attorneys?  
 14 A. No.  
 15 Q. I assume that the testimony you gave in  
 16 your depositions before today was truthful,  
 17 accurate and complete; is that right?  
 18 A. That's correct.  
 19 MR. MARRIOTT: Objection as to form.  
 20 Q. Have you ever testified at trial?  
 21 A. I have not -- oh, wait a minute. Yes, I  
 22 have.  
 23 Q. Okay. Can you describe those  
 24 circumstances to me, please?  
 25 A. It was under -- again, with the software

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1 agreements. It was -- as much I can remember right  
 2 now, it was in San Luis Obispo, out in California.  
 3 Q. Where in California?  
 4 A. San Luis Obispo, I believe. Is that  
 5 the --  
 6 Q. I don't know.  
 7 MR. MARRIOTT: Let me just enter an  
 8 objection. Just so I can have an opportunity to  
 9 object, if I have an objection. The pace is  
 10 picking up quicker, and I don't to either get on  
 11 your toe -- I don't want to step on either of your  
 12 toes, but, if you can, just give me the opportunity  
 13 to either go -- you know, wait a little longer  
 14 after he asks the question, if you could, just so  
 15 I -- if I have an objection, I can get it in. Go  
 16 ahead.  
 17 THE WITNESS: It had to do with a software  
 18 licensing issue, and it was in San Luis Obispo, and  
 19 somewhere in the late '80s.  
 20 BY MR. GANT:  
 21 Q. Do you remember the parties to the  
 22 dispute?  
 23 A. I don't remember right now.  
 24 Q. Was AT&T one of the parties?  
 25 A. Yes, yes.

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1 affidavit or declaration?  
 2 A. In the previous cases where I was disposed  
 3 (SIC), I -- I actually executed declarations.  
 4 Q. Do you remember how many occasions you've  
 5 executed declarations or affidavits?  
 6 A. I'm thinking about four.  
 7 THE WITNESS: Am I going too fast?  
 8 MR. MARRIOTT: Yeah. I just want to have  
 9 a chance -- just pause. You know, count to two or  
 10 something, and give me a chance to --  
 11 THE WITNESS: Okay.  
 12 BY MR. GANT:  
 13 Q. Do you have copies of those declarations  
 14 or affidavits?  
 15 A. I do not.  
 16 Q. Do you know who does?  
 17 A. I'm sure if I went back and found the  
 18 attorneys that were involved at the time, we could  
 19 run them down, but I don't have any copies of them.  
 20 Q. Was the testimony that you offered in  
 21 prior declarations and affidavits true, accurate  
 22 and complete?  
 23 A. Yes.  
 24 Q. Was one of the cases in which you gave  
 25 testimony USL versus Berkeley Software Design?

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1 Q. Do you have a copy of your trial  
 2 testimony?  
 3 (MR. DAVIS THEN RE-ENTERED THE ROOM)  
 4 THE WITNESS: I do not.  
 5 BY MR. GANT:  
 6 Q. Do you know who does?  
 7 A. I do not.  
 8 Q. I assume that testimony was also truthful,  
 9 accurate and complete?  
 10 A. Yes.  
 11 Q. Other than the two declarations that have  
 12 been marked as parts of Exhibits 75 and 76 to  
 13 today's deposition, have you previously executed  
 14 any other affidavits or declarations in any matter?  
 15 MR. MARRIOTT: Ever?  
 16 MR. GANT: (NODS HEAD UP AND DOWN)  
 17 THE WITNESS: Other than the previous ones  
 18 we've talked about? The one in '90 --  
 19 BY MR. GANT:  
 20 Q. Well, I don't know what you're referring  
 21 to. So --  
 22 A. We --  
 23 Q. Other than -- other than the two  
 24 declarations that are marked as exhibits to today's  
 25 deposition, have you ever executed any other

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1 A. Yes. That sounds -- that sounds familiar.  
 2 Yes. I -- yeah. That sounds very familiar.  
 3 Q. You don't have a copy of any testimony  
 4 related to that case, I take it?  
 5 A. No.  
 6 Isn't that the one that was in -- well,  
 7 I'm not supposed to ask you questions.  
 8 MR. MARRIOTT: Yeah. Let him ask the  
 9 questions.  
 10 Q. What's your educational background, sir?  
 11 A. The highest level was in the MBA program  
 12 at -- at -- at Princeton with AT&T and all the  
 13 prerequisites to get there.  
 14 Q. Okay. Do you have a college degree?  
 15 A. Yes.  
 16 Q. From what university or college?  
 17 A. Through this management training program  
 18 in Georgia State University.  
 19 Q. When did you receive that?  
 20 A. A night program. Somewhere -- let's see.  
 21 We finished up in -- it was probably '78. I'm  
 22 not -- because I was doing it at night school and  
 23 going back after we transferred.  
 24 Q. What's your date of birth?  
 25 A. July 24th, 1940.

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1 Q. July 24, 1948?

2 A. 1940.

3 Q. '40. Okay. Just trying to help you out.

4 A. Yeah. I see.

5 Q. Do you actually have an MBA?

6 A. No. Other than with this program when I

7 was with AT&T. It was considered an MBA program.

8 There was a certificate issued for that.

9 Q. I thought you testified earlier that you

10 had an MBA.

11 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE)

12 Q. If you did, that was incorrect?

13 MR. MARRIOTT: Objection as to form.

14 THE WITNESS: No. I -- I said I went to

15 an MBA program. It was an accelerated MBA program

16 with AT&T.

17 BY MR. GANT:

18 Q. But you did not receive a degree --

19 A. No.

20 Q. -- in connection with that program?

21 A. No, I did not.

22 Q. What was your undergraduate degree in?

23 A. Business administration, with a

24 concentration in management.

25 Q. Do you have any formal technical training

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1 of any sort?

2 A. The -- through the high school years I was

3 in a dual discipline program with Bullard-Havens

4 Technical School, and so I came out of there as an

5 apprentice electrician.

6 In the Air Force I was in the airborne

7 radio and communication and radio systems. And in

8 the initial employment with Western Electric I was

9 with telephone repair and those kinds of areas.

10 Q. Anything else?

11 A. No.

12 Q. You're not an -- strike that.

13 You're not a lawyer, are you?

14 A. I am not.

15 Q. You're not an expert in contract

16 interpretation, are you?

17 MR. MARRIOTT: Objection as to the form.

18 THE WITNESS: Other than the -- the

19 software agreements, which we --

20 BY MR. GANT:

21 Q. I'm asking you about general principles of

22 contract interpretation. Are you --

23 MR. MARRIOTT: Objection.

24 Q. Are you an expert in that area?

25 MR. MARRIOTT: Objection as to form.

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1 THE WITNESS: I would say, no.

2 BY MR. GANT:

3 Q. Are you an expert in copyright or

4 copyright law?

5 A. No.

6 Q. Are you an expert in trade secrets law?

7 A. No.

8 Q. Are you an expert in antitrust law?

9 A. No.

10 Q. Are you a computer programmer?

11 A. Not anymore.

12 Q. Were you a computer programmer?

13 A. At one time I was. Yes.

14 Q. When was that?

15 A. Back in the late '60s, early '70s.

16 Q. What types of computers?

17 A. It was application software. It was in

18 the COBAL language.

19 Q. Did you ever work as a programmer on UNIX?

20 A. I did not.

21 Q. Are you an expert in UNIX code?

22 A. No, I am not.

23 Q. You've never worked for IBM; correct?

24 A. That's correct.

25 Q. I take it then that you did not work on

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1 the development of AIX; correct?

2 A. That's correct.

3 Q. When did you first hear of this case?

4 A. Last year. 2003. Probably mid-year.

5 Q. And how did you hear of it at that time?

6 A. I was contacted by the -- the attorneys

7 representing IBM.

8 Q. Who specifically contacted you?

9 A. Gabe Separellia, I believe his name is.

10 MR. GANT: Does counsel want to clarify?

11 MR. MARRIOTT: You can ask the questions,

12 and he can provide answers.

13 BY MR. GANT:

14 Q. Did that individual work for Cravath,

15 Swaine & Moore?

16 A. Yes, he did.

17 Q. And what was the last name?

18 A. Separellia, I believe. Gabe Separellia.

19 I'm probably pronouncing it incorrectly.

20 Q. Okay. Well, I'm going to call him

21 Mr. Separellia. And if it turns out his name is

22 something different, you'll know what I'm talking

23 about; correct?

24 A. Yes. I think that's close enough.

25 Q. Okay.

1 A. Phonetically.  
 2 Q. Okay. How did Mr. Separellia contact you?  
 3 MR. MARRIOTT: Well, it's Saltarelli.  
 4 MR. GANT: Saltarelli?  
 5 MR. MARRIOTT: Saltarelli.  
 6 BY MR. GANT: ...  
 7 Q. Okay. Saltarelli. Thank you.  
 8 How did Mr. Saltarelli contact you?  
 9 A. By telephone.  
 10 Q. What did he say?  
 11 A. He declared that he was an attorney,  
 12 representing IBM in a -- in a litigation, and asked  
 13 would I be willing to give a declaration with  
 14 regard to that case.  
 15 Q. Mr. Saltarelli asked you during that  
 16 initial phone conversation whether you'd be willing  
 17 to provide a declaration; is that right?  
 18 A. Yes, he did.  
 19 Q. At what point during the conversation did  
 20 he ask you that?  
 21 A. (NO AUDIBLE RESPONSE WAS GIVEN)  
 22 Q. Was that the first thing he said after he  
 23 identified himself?  
 24 A. No. There was some small talk before we  
 25 got to -- got to that.

1 Q. Nothing substantive?  
 2 A. No.  
 3 Q. Mr. Saltarelli, didn't he ask -- ask you  
 4 any questions before he asked if you would be  
 5 willing to provide a declaration for this case?  
 6 A. He gave me background on the -- on the  
 7 case.  
 8 Q. But he didn't ask you any questions before  
 9 requesting a declaration?  
 10 MR. MARRIOTT: Objection as to form.  
 11 THE WITNESS: I remember a conversation  
 12 about how he -- how he was able to get in contact  
 13 with me and where that had been. He referenced  
 14 some small talk about the people who worked at the  
 15 licensing organization.  
 16 BY MR. GANT:  
 17 Q. But he didn't ask you any questions;  
 18 correct?  
 19 MR. MARRIOTT: Object as to form.  
 20 THE WITNESS: I don't recall.  
 21 MR. MARRIOTT: Let me just -- maybe I can  
 22 make this simple too. I -- I'm not entirely sure  
 23 it's appropriate for you to be asking leading  
 24 questions, and I'd like to have -- I can either  
 25 object to every one of your questions on the

1 grounds of form, or you can just give me a  
 2 continuing objection. Whichever you'd prefer.  
 3 MR. GANT: I -- I, of course, disagree  
 4 with your position on that, and you can have a  
 5 standing objection.  
 6 MR. MARRIOTT: Okay. Thank you.  
 7 BY MR. GANT:  
 8 Q. Just so the record is clear, you don't  
 9 remember Mr. Saltarelli asking you any questions  
 10 during your initial phone conversation with him  
 11 before he asked you to provide a declaration for  
 12 this case; correct?  
 13 A. I'm sure he did, because there -- there  
 14 was the dialogue back and forth, talking about the  
 15 particular case, and --  
 16 Q. Okay. I -- I don't mean to cut you off,  
 17 but I'm not asking --  
 18 MR. MARRIOTT: Then just don't. So we --  
 19 if you're not -- if you're finished with your  
 20 answer, then go ahead. If you're not, then go  
 21 ahead and finish.  
 22 THE WITNESS: I remember there was  
 23 dialogue back and forth, talking about -- about the  
 24 case and how they got in contact with me and those  
 25 types of things. So there was questions back

1 and -- back and forth.  
 2 BY MR. GANT:  
 3 Q. Well, what I was going to say is I don't  
 4 want you to speculate. What you said to me a  
 5 moment ago was that you were sure there were, and  
 6 my question was specific. Not about any  
 7 assumption. I'm asking for facts. What you know.  
 8 So my question again is: Do you remember  
 9 Mr. Saltarelli asking you any questions during your  
 10 initial phone conversation with him before he asked  
 11 you to provide a declaration for this case?  
 12 MR. MARRIOTT: Objection.  
 13 Q. Yes or no?  
 14 MR. MARRIOTT: Objection as to form.  
 15 And your answer is what it is: Whether  
 16 it's yes, no or something else.  
 17 THE WITNESS: I remember him asking  
 18 questions. I don't really know the specifics at  
 19 this time. I don't recall the specific questions.  
 20 I know he asked me about my family, what I'd been  
 21 doing since retirement, and was I aware of this  
 22 particular litigation. He gave me some background  
 23 on that, and then we -- he asked could I give a  
 24 declaration.  
 25 BY MR. GANT:

1 Q. Do you remember any other questions asked  
2 by Mr. Saltarelli before he asked you to provide a  
3 declaration in this case?  
4 A. Other than what I just stated, no.  
5 Q. He didn't ask you anything about the  
6 details of your work at AT&T before requesting a  
7 declaration?  
8 A. I don't -- I don't recall any.  
9 Q. What was your next contact with someone  
10 from Cravath, Swaine & Moore?  
11 A. I believe there were -- subsequent to that  
12 telephone conversation, there were a couple other  
13 telephones with setting up the details of when we  
14 would meet and where.  
15 Q. Were those subsequent conversations also  
16 with Mr. Saltarelli?  
17 A. Yes, they were.  
18 Q. Anyone else?  
19 A. Not before that first meeting.  
20 Q. Okay. You at some point then had an  
21 in-person meeting with Cravath, Swaine & Moore?.,  
22 A. Yes, I did.  
23 Q. When was that and with whom?  
24 A. It was with Mr. Dave Marriott and Gabe.  
25 And without looking at a calendar, I can't tell you

1 the exact date, but it was sometime March, April.  
2 I remember the exact location, but I don't remember  
3 the exact date.  
4 Q. And, just so the record is clear, the  
5 Mr. Marriott you just referred to is the attorney  
6 who is representing you in today's deposition;  
7 correct?  
8 A. That's correct.  
9 Q. He's sitting to your left right now;  
10 correct?  
11 A. That's correct.  
12 Q. Can you give me your best estimate of  
13 approximately when this first in-person meeting  
14 occurred between you and Cravath, Swaine & Moore?  
15 A. I can't give you the exact date,  
16 because -- are you talking about -- because you  
17 asked that earlier. Are you talking about the  
18 date?  
19 Q. Yes. I'm asking for your best  
20 approximation. A month, a season. The best you  
21 can do. Just try --  
22 A. About April. Somewhere around April 2003.  
23 Q. About 14 months ago; correct?  
24 A. No. It wasn't that long ago. It was --  
25 Q. Was it at least --

1 A. I'm trying --  
2 Q. I'm sorry. I didn't mean to cut you off.  
3 I was going to say, was it at least a year ago?  
4 A. I think it was less than a year. I'm  
5 trying to recall the exact date, because I was  
6 actually doing something else at the time, and  
7 I'm -- I'm thinking about when the declarations  
8 were signed. So it was -- it probably had to be  
9 like September or something.  
10 Q. Do you keep a calendar?  
11 A. Yes, I do.  
12 Q. Do you -- well, strike that.  
13 Did you record some or all of the meetings  
14 that you had with Cravath, Swaine & Moore in your  
15 calendar?  
16 A. Yes, I did.  
17 Q. Do you still have your 2003 calendar?  
18 A. I -- yes.  
19 Q. Is your calendar electronic --  
20 A. Yes, it is.  
21 Q. -- or hard copy?  
22 A. It's electronic.  
23 Q. Or do you have an electronic and a hard  
24 copy?  
25 A. I just have an electronic.

1 Q. Would you agree to preserve your calendars  
2 from 2003 and 2004 in the event that we request  
3 them?  
4 A. Yes.  
5 Q. Thank you.  
6 How many in-person meetings have you had  
7 with one or more lawyers from Cravath, Swaine &  
8 Moore?  
9 A. Including this -- this week, it would be  
10 three.  
11 Q. When did you meet this week?  
12 A. Yesterday.  
13 Q. For how long?  
14 A. Probably a total of about five hours.  
15 There was an interruption there, and we had to go  
16 somewhere else.  
17 Q. You spent about five hours yesterday  
18 preparing for today's deposition?  
19 A. Uh-huh, yes.  
20 Q. And you did that while meeting with  
21 counsel for IBM, who were also representing you in  
22 this case; is that right?  
23 A. That's correct.  
24 Q. Did you discuss some of the topics that  
25 might be covered during today's deposition?

1 MR. MARRIOTT: Counselor, as you know,  
2 you're not entitled to inquire as to what he  
3 discussed with his attorneys.

4 So, Mr. Wilson, I instruct you not to  
5 answer the question.

6 Q. I -- I assume your counsel has advised you  
7 that -- about the nature of the attorney/client  
8 privilege; is that right?

9 A. Yes.

10 MR. MARRIOTT: Counsel -- counsel, you're  
11 not entitled to inquire of the witness what I've  
12 advised him, and you know that.

13 So don't answer the question, Mr. Wilson.

14 MR. GANT: Well, I don't -- I don't want  
15 to -- what I was trying to do was to avoid telling  
16 the witness what my understanding of the law is,  
17 but I'll say it, and you can correct it, if you  
18 disagree with it.

19 MR. MARRIOTT: Go ahead. Say what you'd  
20 like.

21 MR. GANT: Which is that the privilege  
22 belongs to Mr. Wilson, not to IBM, or not to  
23 Cravath, Swaine & Moore. And that Mr. Wilson has a  
24 right to waive his privilege and answer any of my  
25 questions that he wants to in his -- and is willing

1 to.

2 That is my position. I assume you're not  
3 going to disagree with that proposition?

4 MR. MARRIOTT: Well, Counselor, are you  
5 asking Mr. Wilson whether he's waiving the right to  
6 keep his communications with me privileged?

7 MR. GANT: With that understanding, I have  
8 a follow-up question, which is whether he's going  
9 to follow your advice and refuse to answer the  
10 question.

11 So do you disagree with my  
12 characterization?

13 MR. MARRIOTT: I don't agree or disagree  
14 with your -- with your statements. That's not the  
15 point. The point is for you to ask questions and  
16 for him to answer them, unless I instruct him or  
17 advise him not to.

18 I advise you, Mr. Wilson, that -- as -- as  
19 your counsel, that you ought not reveal the  
20 substance of your communications with me after the  
21 point in time when you retained me to be your  
22 lawyer. You can follow or not follow that advice.

23 And if you want to ask him whether he's  
24 going to follow it, go right ahead.

25 BY MR. GANT:

1 Q. Okay. Are you going to follow your  
2 counsel's advice and refuse to answer my question?

3 A. I'll follow counsel's advice.

4 Q. Okay. Fair enough.

5 Without regard to any of the specifics  
6 that you may have discussed with counsel in  
7 preparing for today's deposition, by whatever  
8 means, did you feel that you had a good sense  
9 coming in to today's deposition about what the  
10 topics that would be addressed would be?

11 MR. MARRIOTT: Objection as to form.

12 Counsel, I think you know well that  
13 question appears designed to elicit information  
14 covered by the attorney/client privilege.

15 Mr. -- Mr. Wilson, I instruct you -- or,  
16 rather, I advise you, as -- as your counsel, and,  
17 in fact, instruct you, and urge you to follow the  
18 instruction, not to disclose in response to  
19 counsel's questions information provided to you  
20 during our sessions in preparation for -- for this  
21 deposition.

22 MR. GANT: And I, obviously, think that my  
23 question is proper, and I'm going to ask the court  
24 reporter to just read it back.

25 Your instruction is noted, and I'm just --

1 the witness can either answer or say that he's not  
2 going to answer based on counsel's advice.

3 MR. MARRIOTT: I think the witness has  
4 generally said he's going to follow the advice.  
5 Are we going to have to go through every question  
6 with you asking whether he's going to follow the  
7 advice?

8 MR. GANT: Well, let's --

9 MR. MARRIOTT: We have a continuing  
10 understanding that he's following --

11 MR. GANT: Well, I didn't understand him  
12 to say that, but I'm happy to try and do that for  
13 the sake of efficiency.

14 BY MR. GANT:

15 Q. Mr. Wilson, in -- if any question that I  
16 ask prompts a response from Mr. Marriott, whereby  
17 he advises you not to answer my question on the  
18 basis of attorney/client privilege, do you intend  
19 in each of those cases to refuse to answer my  
20 questions?

21 A. Yes.

22 Q. Okay. Who was present during your meeting  
23 yesterday preparing for today's deposition?

24 MR. MARRIOTT: That question you can  
25 answer, Mr. Wilson.

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1 THE WITNESS: The folks sitting to my left  
2 were all present yesterday.  
3 BY MR. GANT:  
4 Q. Everybody?  
5 A. Uh-huh.  
6 Q. Okay. And they've made their appearances  
7 on the record this morning?  
8 A. Yes.  
9 Q. Anybody else present?  
10 A. No.  
11 Q. What's your best approximation of how many  
12 telephone conversations you've had with counsel for  
13 IBM since first being contacted about this case?  
14 A. Probably about six.  
15 Q. How many of those, if any, were with  
16 Mr. Marriott?  
17 A. Half of them. Three of them.  
18 Q. Okay. And were the rest with  
19 Mr. Saltarelli, or were there others as well?  
20 A. No. Just Mr. Saltarelli.  
21 Q. So before today's deposition you had met  
22 in person three times with counsel for IBM and had  
23 approximately six phone conversations with one or  
24 more attorneys representing IBM in this case;  
25 correct?

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1 A. That's correct.  
2 Q. It's fair to say, Mr. Wilson, isn't it,  
3 that you have been cooperating with counsel for IBM  
4 in connection with this case?  
5 A. I think that's fair. Yes.  
6 Q. Mr. Marriott asked this, and I just want  
7 to make sure that I understand and the record is  
8 clear. Have you been received -- strike that.  
9 Have you received or do you expect to  
10 receive any form of compensation whatsoever in  
11 connection with your time or work on this case?  
12 A. No. The only thing is, I guess, when your  
13 firm sent the subpoena there was a check for \$40 or  
14 something.  
15 Q. A witness fee?  
16 A. Uh-huh.  
17 Q. Other than that, nothing else?  
18 A. No.  
19 Q. Do you own IBM stock?  
20 A. I do not.  
21 Q. Does anyone in your family?  
22 A. Not to my knowledge.  
23 Q. Do you own stock in SCO, the plaintiff in  
24 this case?  
25 A. No.

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1 Q. Are you sure?  
2 A. Yeah, I'm pretty sure. The reason -- the  
3 only reason I hesitated was that I have a couple of  
4 market index funds, and through that -- I don't  
5 think that's directly owned, but it could be a part  
6 of that portfolio that I'm not aware of.  
7 Q. Presumably you -- you might own some IBM  
8 stock through the same vehicles; correct?  
9 A. Could be. Yes.  
10 Q. Do you know for a fact whether or not you  
11 do?  
12 A. I do not.  
13 Q. Has anyone acting on behalf of SCO  
14 attempted to contact you with respect to this case?  
15 A. They have not.  
16 Q. You're sure about that?  
17 A. Do you want to state the question again?  
18 MR. GANT: Could you read it back for the  
19 witness.  
20 (PREVIOUS QUESTION THEN READ)  
21 THE WITNESS: Other than the subpoena, no.  
22 MR. GANT: Well, the subpoena wasn't  
23 propounded by SCO, just so the record is clear.  
24 MR. MARRIOTT: The subpoena was served by  
25 IBM. So -- for clarification: Yeah. Snell &

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1 Wilmer is perhaps what's confusing you. The two  
2 S's. That's what I suspect is going on.  
3 THE WITNESS: Oh, okay.  
4 BY MR. GANT:  
5 Q. Okay. So it's your testimony under oath  
6 that nobody identifying themselves as representing  
7 or acting on behalf of SCO, the plaintiff in this  
8 case, ever attempted to contact you about this  
9 matter?  
10 A. No.  
11 Q. No one ever did?  
12 A. No.  
13 Q. Have you -- are you familiar with the name  
14 David Markarian?  
15 A. No, I'm not.  
16 Q. Before today had you ever heard the name  
17 Boies, Schiller & Flexner?  
18 A. No.  
19 Q. I take it given your prior answers to my  
20 questions that you have executed two and only two  
21 declarations related to this case; is that right?  
22 A. That's correct.  
23 Q. I assume that there were drafts of each of  
24 these declarations; is that right?  
25 MR. MARRIOTT: Objection as to form.



1 Q. You can answer.  
 2 A. Yes. There were drafts.  
 3 Q. Well, let's start with the earlier  
 4 declaration; December 2003. Do you remember how  
 5 many drafts of that document there were?  
 6 A. One.  
 7 Q. One draft?  
 8 A. Uh-huh.  
 9 Q. Is that right?  
 10 A. One. Yes.  
 11 Q. And then there was the final, which you  
 12 signed?  
 13 A. Yes.  
 14 Q. How did you receive the first draft of  
 15 your December 2003 declaration?  
 16 A. By mail.  
 17 Q. Sent to you by counsel for IBM?  
 18 A. Yes, it was.  
 19 Q. And they had drafted the language for you?  
 20 A. Yes. After we had made the declaration.  
 21 Q. Pardon me?  
 22 A. After we had our meeting, yes, they  
 23 drafted the language.  
 24 Q. And do you remember what kinds of changes,  
 25 if any, you made to the draft declaration that led

1 up to your December 2003 execution?  
 2 MR. MARRIOTT: Objection as to the form.  
 3 It lacks foundation, and I think misstates the  
 4 testimony. Although, I don't suggest that it's in  
 5 any way intentional.  
 6 MR. GANT: You can answer, if you  
 7 understand it.  
 8 MR. MARRIOTT: I can clarify on recross or  
 9 redirect.  
 10 THE WITNESS: I don't know exactly. There  
 11 were very minor changes. Nothing to the  
 12 substantive part of the declaration. There was a  
 13 couple of minor references that we --  
 14 BY MR. GANT:  
 15 Q. Okay. So let me recapitulate and make  
 16 sure I understand, and make sure Mr. Marriott has  
 17 no objection, so that we can get a clean record.  
 18 You received at some point after meeting  
 19 with counsel for IBM a draft of a declaration. You  
 20 made some minor changes to it, and then it was put  
 21 into final form, which you signed, and, as  
 22 reflected, as attached to Exhibit 75; is that  
 23 right?  
 24 A. Uh-huh. That's correct.  
 25 Q. Do you still have the draft declaration?

1 A. I do not.  
 2 Q. What happened to it?  
 3 A. I returned it back to the attorney.  
 4 Q. Why did you do that?  
 5 A. At their request, after I made the  
 6 corrections, I sent it back, and they gave me the  
 7 clean copies to sign.  
 8 Q. Counsel for IBM asked you to return the  
 9 draft to them?  
 10 A. Uh-huh.  
 11 Q. You have to answer audibly, sir.  
 12 A. Yes, they did.  
 13 Q. Let's turn to the second declaration that  
 14 you executed in this case, which is marked at the  
 15 front of Exhibit 76. You don't need to look at it.  
 16 I just want to make sure you know what I'm  
 17 referring to. How many drafts of that declaration  
 18 do you recall?  
 19 A. Just one.  
 20 Q. And can you walk me through the process  
 21 from the receipt of that first draft, including how  
 22 you got it, to the execution of Exhibit 76 in April  
 23 2004?  
 24 A. The same process with the -- the first  
 25 one. It was sent by mail. I reviewed it. Signed

1 it. Put it back in the mail. I sent it back to  
 2 New York.  
 3 On the last declaration there was a --  
 4 when the first one arrived, it -- it got -- it was  
 5 left on the front porch and got wet. So they sent  
 6 another one subsequently, and we sent -- sent it  
 7 back.  
 8 Q. Okay. I'm trying to understand if there  
 9 were any changes at all.  
 10 A. No.  
 11 Q. So you -- you received a draft of the  
 12 declaration now marked as Exhibit 76 from Cravath,  
 13 Swaine & Moore. You signed it without any changes;  
 14 is that correct?  
 15 A. Yes.  
 16 Q. Can you explain to me why it is that you  
 17 executed a second declaration in this case?  
 18 A. Yes. In looking at the -- the second  
 19 declaration was -- was -- on the advice of the IBM  
 20 attorneys was shorter and included the information  
 21 on \$ echo, and so it essentially was the same  
 22 thing.  
 23 MR. GANT: Could you read back the answer,  
 24 please.  
 25 (PREVIOUS ANSWER THEN READ)

1 BY MR. GANT:  
2 Q. The attorneys for IBM recommended to you  
3 that you execute a second declaration; is that  
4 right;  
5 A. That's correct.  
6 Q. And the declaration that you did, in fact,  
7 execute on their advice is marked as Exhibit 76;  
8 correct?  
9 A. That's correct.  
10 Q. Do you know why, other than the fact that  
11 it was shorter, counsel for IBM asked you to  
12 execute a second declaration?  
13 A. Other than that, no.  
14 Q. In your mind your first and second  
15 declarations, Exhibits 75 and 76, are essentially  
16 the same thing?  
17 A. Yes, they are.  
18 Q. You don't have any specific knowledge or  
19 understanding about why counsel for IBM deleted  
20 some material from Exhibit 75 and gave you a new  
21 declaration without that information, which is  
22 marked as Exhibit 76?  
23 MR. MARRIOTT: Objection as to the form.  
24 I think this has been asked three times.  
25 MR. GANT: Would you read it back.

1 understanding about why counsel for IBM wanted you  
2 to address \$ echo in your second declaration?  
3 A. Only that it -- no. The only thing I know  
4 is that the -- the second declaration was actually  
5 shorter, and it included the information from  
6 \$ echo, which was not in the first. And that's --  
7 that was the driving impetus for it.  
8 Q. You didn't suggest to counsel for IBM that  
9 a new declaration be executed to address \$ echo; is  
10 that correct?  
11 A. That's correct.  
12 Q. That was the idea of counsel for IBM?  
13 A. Yes, it was -- or -- yes.  
14 Q. Are you -- strike that.  
15 Were you aware before this morning that  
16 counsel for SCO, the plaintiff in this case, did  
17 not have a copy of either of your declarations  
18 prior to approximately 11:00 p.m. this past  
19 Tuesday?  
20 A. No. I wouldn't have -- I wouldn't have --  
21 I don't know when they gave you documents.  
22 Q. You didn't know that before today?  
23 A. No.  
24 Q. Does that fact surprise you?  
25 MR. MARRIOTT: Objection as to the form.

1 THE WITNESS: I'm sorry.  
2 MR. GANT: So that he'll know what I said.  
3 If you don't understand it, I'll be happy to try  
4 again.  
5 THE WITNESS: Okay.  
6 (PREVIOUS ANSWER THEN READ)  
7 MR. MARRIOTT: Objection as to form. I  
8 think it -- it was asked and answered, and I think  
9 it misstates the prior testimony.  
10 THE WITNESS: Only with regard to the --  
11 as I said earlier, it was shorter, and it included  
12 the information from \$ echo.  
13 BY MR. GANT:  
14 Q. You're not aware of any reason for any  
15 other changes?  
16 A. I'm not.  
17 Q. What's your understanding, if any, about  
18 why counsel for IBM wanted your second declaration  
19 to address \$ echo?  
20 MR. MARRIOTT: Objection as to form.  
21 Lacks foundation.  
22 THE WITNESS: No, I do not.  
23 BY MR. GANT:  
24 Q. I think I asked, what is your  
25 understanding, if any? I take it, you have no

1 THE WITNESS: No. It didn't surprise me.  
2 I mean it's -- it was like a non sequitur. I  
3 mean --  
4 BY MR. GANT:  
5 Q. Did you know what was going to be done  
6 with your declaration at the time you executed  
7 your -- strike that.  
8 Did you know what was going to be done  
9 with your declarations at the time you executed  
10 them?  
11 A. I did not.  
12 Q. Did counsel for IBM tell you anything  
13 about how they intended to use your declarations,  
14 either before or at the time you executed them?  
15 A. No, other than they would be provided  
16 as -- as information in this litigation.  
17 Q. Provided to whom?  
18 A. To -- to the opposing counsel, and -- and  
19 it may be -- it may come up in court.  
20 Q. Have you reviewed any drafts or executed  
21 declarations or affidavits by other individuals for  
22 submission in this case?  
23 A. I have not.  
24 Q. You mentioned David Frasure earlier today.  
25 Do you recall that?

1 A. Yes, I do.  
 2 Q. Do you know whether or not he's given  
 3 testimony in this case?  
 4 A. I believe he was disposed -- gave  
 5 testimony this week. He also made declarations. I  
 6 know that.  
 7 Q. How do you know that?  
 8 A. I don't know that. I was told he made  
 9 declarations.  
 10 Q. When were you told that?  
 11 MR. MARRIOTT: And just to, I guess, state  
 12 the obvious, you can answer the question with  
 13 respect to information you learned prior to you  
 14 having retained us as your counsel. And if that's  
 15 where your information comes from, then, by all  
 16 means, provide the answer to the question. If it  
 17 comes from later, then -- then I think you should  
 18 not provide it, but --  
 19 MR. GANT: Is it your position that that  
 20 information, if imparted --  
 21 MR. MARRIOTT: My position --  
 22 MR. GANT: -- is in connection with  
 23 providing legal advice?  
 24 MR. MARRIOTT: My position is what I just  
 25 said, Counselor.

1 Go ahead and answer the question.  
 2 THE WITNESS: Yeah. I -- in the initial  
 3 telephone conversation --  
 4 BY MR. GANT:  
 5 Q. Uh-huh.  
 6 A. -- and the -- also the meeting, here in  
 7 Greensboro, we talked about Dave Frasure and a  
 8 couple of other folks within the organization that  
 9 would probably -- that may or may not be -- be  
 10 asked. And Dave Frasure was definitely included in  
 11 that.  
 12 Q. Who were the other people included?  
 13 A. I don't know who else was -- that might  
 14 have been disposed.  
 15 Q. Deposed.  
 16 A. Deposed. Deposed.  
 17 Q. Hopefully -- hopefully that won't happen.  
 18 A. Right.  
 19 But it was -- only Dave Frasure was the  
 20 one I knew, but they had talked to other folks.  
 21 And there was -- there was a lot of people in the  
 22 organization that -- that names came up. I said, I  
 23 remember this person. There was Chuck Green and a  
 24 few others.  
 25 Q. All right. Can you list for me all of the

1 names that you remember coming up during that  
 2 conversation?  
 3 A. I remember Dave Frasure and Chuck Green.  
 4 Q. Chuck Green. Anyone else?  
 5 A. No.  
 6 Q. You don't remember any other names, or you  
 7 didn't know who they were at the time they were  
 8 mentioned to you?  
 9 MR. MARRIOTT: Objection as to form.  
 10 Lacks foundation. It mistakes the testimony.  
 11 THE WITNESS: I don't remember other names  
 12 coming up in those conversations.  
 13 BY MR. GANT:  
 14 Q. Now, you said you became aware that  
 15 Mr. Frasure had submitted a declaration. When did  
 16 you become aware of that?  
 17 A. I'd say that I remember -- I don't know if  
 18 he did or not, but I thought he was one of the  
 19 people that was going to be deposed. I knew that  
 20 the first two meetings.  
 21 Q. Has the nature of his declaration ever  
 22 been described to you?  
 23 MR. MARRIOTT: Objection as to form. I  
 24 think he just testified he didn't know if there was  
 25 a declaration. So lacks foundation.

1 MR. GANT: Go ahead. You can answer.  
 2 MR. MARRIOTT: Misstates the testimony.  
 3 MR. GANT: I'm sorry. Are you finished?  
 4 MR. MARRIOTT: I think I finished.  
 5 THE WITNESS: Can you read back the  
 6 question?  
 7 MR. GANT: Would you like it read back?  
 8 THE WITNESS: Yeah.  
 9 MR. GANT: Okay. Let's do it.  
 10 (REQUESTED PORTION OF THE RECORD READ)  
 11 THE WITNESS: No.  
 12 BY MR. GANT:  
 13 Q. And you said you were aware before today  
 14 that he had been deposed earlier this week?  
 15 MR. MARRIOTT: Objection as to form. It  
 16 misstates the testimony.  
 17 Q. You can answer.  
 18 A. I knew that he was one of the people that  
 19 would be deposed, and I knew that in the first  
 20 telephone conversation and also in the meeting I  
 21 had with the IBM attorneys here in Greensboro.  
 22 Q. Coming in to today's deposition were you  
 23 aware of any of the questions that were asked of  
 24 Mr. Frasure earlier this week?  
 25 MR. MARRIOTT: And, here again --

<p style="text-align: right;">Page 165</p> <p>1 MR. GANT: I think the witness answered  2 the question. Tell him to --  3 MR. MARRIOTT: Pardon?  4 MR. GANT: I think the witness already  5 answered that.  6 MR. MARRIOTT: Well, I don't think so.  7 MR. GANT: Well, he nodded. Okay. Go  8 ahead.  9 MR. MARRIOTT: Can I have back the  10 question, please.  11 (PREVIOUS QUESTION THEN READ)  12 MR. MARRIOTT: And all I want to do is  13 caution Mr. Wilson not to reveal the content of any  14 of our attorney/client communications. If you can  15 answer the question otherwise, go ahead.  16 BY MR. GANT:  17 Q. You answered by nodding yes; isn't that  18 right?  19 A. No. Repeat the question?  20 Q. You didn't nod? I just want to -- I  21 thought you did nod. Did you nod, yes, in response  22 to my question?  23 MR. MARRIOTT: Counselor, are you trying  24 to get beyond the assertion of privilege, because  25 you appear to not have much respect for it. If</p>	<p style="text-align: right;">Page 167</p> <p>1 guess. That's the best way, to read it back.  2 MR. GANT: Let's do that. Is that -- is  3 that agreeable?  4 THE WITNESS: Yeah, because I think I  5 understand it now.  6 MR. GANT: Okay. Well, let's just read it  7 back. Make sure you understand it. If you're  8 willing to answer it, please, do so. If you're  9 unwilling to answer it, just state that for the  10 record, please.  11 (DISCUSSION OFF THE RECORD)  12 (REQUESTED PORTION OF THE RECORD READ)  13 MR. MARRIOTT: And the instruction is if  14 you can provide that information without revealing  15 communications with counsel, then do so.  16 Otherwise, omit that information from your answer.  17 THE WITNESS: No.  18 BY MR. GANT:  19 Q. No, you weren't; or, no, you're not  20 willing to answer? I just want to be clear.  21 A. No. I don't have knowledge of --  22 Q. Okay. Great. Thank you.  23 A. (WITNESS NODS HEAD UP AND DOWN)  24 Q. Now, you have previously testified that  25 counsel for IBM drafted your declarations; correct?</p>
<p style="text-align: right;">Page 166</p> <p>1 you're asking him -- if you're asking for the  2 disclosure of privileged information, I think that  3 that's improper.  4 If you can answer his question, without  5 doing that, then -- then, please, do so.  6 MR. GANT: I assume if he answers, that  7 he'll -- he will have reached the conclusion he can  8 answer without revealing the privilege. I can't  9 make the witness say anything. So --  10 MR. MARRIOTT: Well --  11 MR. GANT: If you're suggesting that I'm  12 making him do anything, that's obviously  13 preposterous. Mr. Wilson is capable of listening  14 to and following your advice, and --  15 MR. MARRIOTT: And I'm suggesting --  16 MR. GANT: I'm asking a follow-up  17 question.  18 MR. MARRIOTT: -- just what I said. So go  19 ahead, and if you can answer his question without  20 revealing information protected by the privilege,  21 then do that.  22 Do you have the question in mind, or do  23 you need it read back?  24 THE WITNESS: You're asking if I knew  25 anything about the -- well, we can read it back, I</p>	<p style="text-align: right;">Page 168</p> <p>1 A. That's correct.  2 Q. If you had drafted them, would there have  3 been anything different about them, if you had done  4 all of it yourself?  5 MR. MARRIOTT: Can I just hear it back,  6 because I want to make sure I got the first part of  7 the question.  8 (PREVIOUS QUESTION THEN READ)  9 MR. MARRIOTT: Objection as to form.  10 Calls for speculation.  11 You may answer the question.  12 THE WITNESS: If this is the declaration I  13 made in the -- I guess I mentioned this morning  14 there was one -- I think a typographical error that  15 we referenced in paragraph 4.01, 4.03 on page five  16 of the second, but, other than that, no. They're  17 the same.  18 BY MR. GANT:  19 Q. So it's your testimony that if you hadn't  20 been aided by counsel for IBM in drafting your  21 declarations marked as Exhibits 75 and 76, they  22 would have been identical in every respect to the  23 way they are as executed?  24 MR. MARRIOTT: Objection as to form. I  25 think that's a misleading question, and I think</p>

1 that it also calls for speculation.  
 2 You can answer the question.  
 3 THE WITNESS: I don't know if they would  
 4 have been identical. I think the essence of what  
 5 was said would be the same.  
 6 BY MR. GANT:  
 7 Q. You might have put things differently?  
 8 A. No.  
 9 MR. MARRIOTT: Objection as to form.  
 10 Q. When you say, the essence would have  
 11 been --  
 12 A. In other words, I'm --  
 13 MR. MARRIOTT: Are you asking, Counselor,  
 14 if the same commas would have been in the same  
 15 place and the periods in the same spot? I mean is  
 16 that what you intend to ask?  
 17 MR. GANT: I think my question speaks for  
 18 itself.  
 19 THE WITNESS: I think they would -- they  
 20 would pretty much look like this, if I had to -- if  
 21 I had to draft it and type it myself. Yes.  
 22 BY MR. GANT:  
 23 Q. When you say, "pretty much," I'm trying to  
 24 understand.  
 25 A. Well, the grammatical things, you know.

1 How -- paragraphs starting and those types of  
 2 things.  
 3 Q. Other than grammar and punctuation, the  
 4 declarations that you've executed in this case  
 5 would have been the same if you would have drafted  
 6 them yourself than they are as drafted by counsel  
 7 for IBM; is that your testimony?  
 8 MR. MARRIOTT: Can I just ask, are you  
 9 asking whether they would be the same in substance?  
 10 Because if you're asking that, I have no problem.  
 11 If you're asking him whether they would otherwise  
 12 be identical in language, then I think that  
 13 question is unfair, misleading and -- objection on  
 14 the grounds of issue. So if you can clarify, I may  
 15 have no objection.  
 16 MR. GANT: I'll -- I'll let the question  
 17 stand. Your objection is noted.  
 18 MR. MARRIOTT: Okay.  
 19 THE WITNESS: Could you read it back?  
 20 (PREVIOUS QUESTION THEN READ)  
 21 THE WITNESS: Yes.  
 22 BY MR. GANT:  
 23 Q. You testified that in preparation for  
 24 today's deposition you reviewed Exhibit 78 and  
 25 Exhibit 75 and 76; is that right?

1 MR. MARRIOTT: Including the attachments  
 2 too?  
 3 MR. GANT: Yes. The entire exhibit?  
 4 THE WITNESS: Yes.  
 5 BY MR. GANT:  
 6 Q. Did you review any other documents in  
 7 preparation for today's deposition?  
 8 A. I did not.  
 9 Q. Did you review any documents to refresh  
 10 your recollection prior to today's deposition?  
 11 A. Other than the ones you mentioned earlier?  
 12 Q. Yes.  
 13 A. No.  
 14 Q. Going back to your earlier declaration,  
 15 Exhibit 75. What documents, if any, did you review  
 16 prior to signing the declaration?  
 17 MR. MARRIOTT: Other than the ones that  
 18 are appended to it?  
 19 MR. GANT: I think you're coaching,  
 20 Mr. Marriott.  
 21 MR. MARRIOTT: I'm asking a question.  
 22 MR. GANT: If you have an objection, state  
 23 it.  
 24 MR. MARRIOTT: Well, Counselor, you had --  
 25 you had no difficulty during my questioning

1 clarifying that we were talking about declarations  
 2 and attachments. So I don't see what the problem  
 3 is, when I ask the same question you asked. So --  
 4 but if you think that's coaching, then I'll object  
 5 as to form.  
 6 MR. GANT: Can you read back the question.  
 7 I'll listen to it again then, with your objection  
 8 in mind. See if I want to modify it. If not, I'd  
 9 ask the witness to answer.  
 10 (PREVIOUS QUESTION THEN READ)  
 11 MR. GANT: I'll stick with my question.  
 12 Can you answer, please?  
 13 MR. MARRIOTT: Same objection.  
 14 THE WITNESS: I reviewed the declaration  
 15 and the attachments.  
 16 BY MR. GANT:  
 17 Q. Anything else?  
 18 A. No.  
 19 Q. When was the first time -- strike that.  
 20 There are nine documents attached behind  
 21 tabs to Exhibit 75; correct?  
 22 A. That's correct.  
 23 Q. And after leaving AT&T when was the last  
 24 time you saw these documents before you were shown  
 25 them by counsel for IBM?

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1 MR. MARRIOTT: Objection as to form.  
 2 THE WITNESS: If you're talking about the  
 3 specific attachments to the -- to these -- these  
 4 declarations?  
 5 MR. GANT: Yes.  
 6 MR. MARRIOTT: I think that -- let me just  
 7 tell you what my objection is. I think some of  
 8 these documents are dated differently in time. So  
 9 I think if you want to ask it separately, I may  
 10 have no objection, but I think insofar as you're  
 11 asking a question about nine different documents, I  
 12 think it's -- it's compound and unfair.  
 13 MR. GANT: I understand your comment. I  
 14 don't think it bears on the question. So I'll  
 15 stick with it and ask the witness to answer.  
 16 MR. MARRIOTT: Okay.  
 17 THE WITNESS: I have not looked at any --  
 18 any -- any documents since leaving AT&T, other than  
 19 through being deposed.  
 20 BY MR. GANT:  
 21 Q. So between the time you left AT&T in 1991  
 22 and your contacts with counsel for IBM in this case  
 23 in 2003, you hadn't looked at any of the documents  
 24 attached to your declaration in Exhibit 75;  
 25 correct?

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1 A. Right.  
 2 Q. And is the same true with respect to all  
 3 of the documents attached to your declaration at  
 4 Exhibit 76?  
 5 A. That's correct.  
 6 Q. At what point -- strike that.  
 7 Did -- strike that.  
 8 When did counsel for IBM provide you with  
 9 copies of the documents which are attached to your  
 10 declarations?  
 11 A. Other than the declaration itself, there  
 12 was -- those documents were available during our  
 13 first meeting. The software -- in other words, the  
 14 backup material, the exhibit material, was -- we  
 15 talked about at our -- at our meetings. In  
 16 reference to them, I guess, would be the right  
 17 term.  
 18 Q. When you say they were available, what do  
 19 you mean?  
 20 A. They had them with them when they came to  
 21 Greensboro.  
 22 Q. Did they leave copies with you?  
 23 A. No.  
 24 Q. Did you review all of the pages of all of  
 25 the documents attached to your declarations during

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1 your initial meeting with counsel for IBM?  
 2 A. I didn't review all of the pages. I  
 3 looked at different references. Subsequently I  
 4 did, but I didn't -- at the time of that initial  
 5 meeting, you're talking about, in Greensboro?  
 6 Q. That's right.  
 7 A. I didn't go through every single document.  
 8 Q. Did you at least look at every single  
 9 document?  
 10 A. Yes.  
 11 Q. When after -- when in relation to that  
 12 first in-person meeting with counsel for IBM were  
 13 you sent a declaration for you to sign?  
 14 A. When was I sent --  
 15 Q. When were you sent the draft of your  
 16 first --  
 17 A. Oh.  
 18 Q. -- declaration in relation to the timing  
 19 of your first in-person meeting?  
 20 A. About a week later.  
 21 Q. About a week later?  
 22 A. Uh-huh.  
 23 Q. And how soon thereafter did you execute  
 24 the declaration, as modified slightly?  
 25 A. Well, the date -- I mean the exact date's

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1 on there. That's when they were executed.  
 2 Q. Well, I understand when you signed it.  
 3 I'm trying to figure out how -- you signed your  
 4 first declaration on December 11, 2003; correct?  
 5 A. Uh-huh.  
 6 Q. Approximately when was that in-person  
 7 meeting?  
 8 A. Oh, it was probably a couple months before  
 9 that.  
 10 Q. A few months?  
 11 A. And I'm just speculating now, based on  
 12 when they were signed.  
 13 MR. MARRIOTT: I suspect he doesn't want  
 14 you to speculate, but -- so in the future --  
 15 MR. GANT: Yeah. I don't.  
 16 MR. MARRIOTT: -- I would -- I would urge  
 17 you not to speculate, and I'm sure he doesn't want  
 18 your speculation.  
 19 BY MR. GANT:  
 20 Q. Unless I ask you for your best  
 21 approximation. For instance, that may or may not  
 22 be speculation in Mr. Marriott's eyes, but I will  
 23 try and advise you if I'm asking you for something  
 24 other than concrete personal knowledge. Okay?  
 25 A. (WITNESS NODS HEAD UP AND DOWN)

1 Q. Do you understand that?  
 2 A. (WITNESS NODS HEAD UP AND DOWN)  
 3 Q. You have to answer audibly.  
 4 A. Yes.  
 5 Q. Okay.  
 6 A. A nod doesn't count; right?  
 7 Q. Were there any in-person meetings after  
 8 your first in-person meeting with counsel for IBM  
 9 prior to your executing your first declaration,  
 10 dated December 11, 2003?  
 11 A. There was not.  
 12 MR. MARRIOTT: When you get a convenient  
 13 moment, it would be great for a break. I need to  
 14 visit the rest room.  
 15 MR. GANT: We have ten minutes on the  
 16 tape. Is it all right if we go --  
 17 MR. MARRIOTT: That should be fine.  
 18 BY MR. GANT:  
 19 Q. Were you sent any other documents or  
 20 information after your initial in-person meeting  
 21 with counsel for IBM prior to executing your  
 22 December 11, 2003 declaration?  
 23 A. Only the draft.  
 24 Q. Nothing else?  
 25 A. No.

1 Q. So it is accurate, isn't it, that prior to  
 2 executing your declaration, dated December 11,  
 3 2003, you had not read in their entirety all of the  
 4 pages of all of the documents attached as tabs to  
 5 that declaration?  
 6 MR. MARRIOTT: Objection as to form.  
 7 THE WITNESS: That's correct. You said  
 8 prior to the execution; is that what you said?  
 9 BY MR. GANT:  
 10 Q. That's right.  
 11 A. Uh-huh. I guess I -- make sure I'm clear,  
 12 because I had read them before.  
 13 Q. At the time you were at AT&T?  
 14 A. Right.  
 15 Q. But you had not read them in their  
 16 entirety since leaving AT&T --  
 17 A. Right.  
 18 Q. -- in 1991; correct?  
 19 A. That's correct.  
 20 Q. So it had been at least 12 years since you  
 21 had read in their entirety the documents attached  
 22 as tabs to your December 11, 2003 declaration;  
 23 correct?  
 24 A. That's correct.  
 25 Q. You mentioned earlier the term

1 intellectual property. Are you familiar with that  
 2 term?  
 3 A. Yes, I am.  
 4 Q. What's your understanding of what the term  
 5 means?  
 6 A. Intellectual property. My understanding  
 7 is the -- any technical information, any copyright  
 8 information, any patent information or trade secret  
 9 information that we had within the AT&T system.  
 10 Q. I assume that entities other than AT&T own  
 11 rights to intellectual property; is that correct?  
 12 MR. MARRIOTT: Objection as to form.  
 13 THE WITNESS: Yes.  
 14 BY MR. GANT:  
 15 Q. In your view does intellectual property --  
 16 strike that.  
 17 In your view is intellectual property  
 18 entitled to the same protections as physical  
 19 property?  
 20 MR. MARRIOTT: Objection as to form.  
 21 Lacks foundation. Calls for speculation.  
 22 THE WITNESS: Yes.  
 23 BY MR. GANT:  
 24 Q. While you were at AT&T did you participate  
 25 in negotiations that related to AT&T's intellectual

1 property?  
 2 A. Yes, I did.  
 3 Q. Based on your experience at AT&T, is it  
 4 your understanding that AT&T protected its  
 5 intellectual property rights?  
 6 A. Yes, they did.  
 7 Q. Is it also your understanding that AT&T  
 8 tried to profit by commercializing its intellectual  
 9 property?  
 10 A. Yes.  
 11 Q. Do you agree that the owner of  
 12 intellectual property is free to decide what to do  
 13 with that property, including determining the  
 14 circumstances under which it will allow others to  
 15 use its intellectual property?  
 16 MR. MARRIOTT: Can I have the question  
 17 back, please.  
 18 You're getting a note too, Counsel.  
 19 Can you read that back.  
 20 (PREVIOUS QUESTION THEN READ)  
 21 MR. MARRIOTT: Objection as to form.  
 22 Vague, lacks foundation, seeks a legal conclusion  
 23 from a lay witness, calls for speculation. You can  
 24 answer -- vague, and you can answer, if you -- if  
 25 you can.

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1 THE WITNESS: Yes.

2 BY MR. GANT:

3 Q. During any of the breaks today, including

4 lunch -- I'm not interested in what, if anything,

5 was said, but I just want to know if you spoke with

6 counsel for IBM about your testimony today during

7 the breaks of today's deposition?

8 MR. MARRIOTT: And I'll just caution you

9 not to reveal the substance of any communication.

10 MR. GANT: I'm just asking a factual

11 question.

12 MR. MARRIOTT: I understand.

13 THE WITNESS: Okay. And the question was?

14 MR. GANT: Let's read it back.

15 THE WITNESS: Yeah. Read it back.

16 (PREVIOUS QUESTION THEN READ)

17 THE WITNESS: Yes.

18 BY MR. GANT:

19 Q. Yes, you did?

20 A. Uh-huh.

21 MR. GANT: We're almost out of video.

22 THE WITNESS: And the reason I was trying

23 to clarify that -- no. It's technical. Don't

24 worry about it.

25 MR. GANT: Okay. It's your answer. You

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1 can stop it whenever you see fit.

2 We're almost out of tape. So let's take a

3 very short break, so we don't have to keep you here

4 any longer than necessary.

5 MR. MARRIOTT: Just -- I want to hear what

6 he has to say about if you're --

7 MR. GANT: Well, why don't you do it on

8 your redirect then.

9 MR. MARRIOTT: Okay. Fine.

10 MR. GANT: I mean he --

11 MR. MARRIOTT: Unless you want to finish,

12 I'll do it on my redirect.

13 MR. GANT: Coach, coach, coach.

14 Are we on a break, or are you still

15 testifying, sir?

16 THE WITNESS: I'm clear about the

17 difference between the IBM attorneys and the

18 counsel representing me. I think I'm pretty clear

19 about the difference between those two, and so

20 that's -- the fact that they're wearing the same

21 hat, does that make a difference? That's -- that's

22 the question in my mind.

23 MR. GANT: Okay.

24 MR. MARRIOTT: I think we're -- since you

25 don't get to ask the questions, I think we're done.

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1 THE VIDEOGRAPHER: One moment, please.

2 This marks the end of tape number two in

3 the deposition of Otis Wilson. Going off the

4 record. The time is 2:26 p.m.

5 (RECESS TAKEN AT 2:26 P.M. TO 2:39 P.M.)

6 THE VIDEOGRAPHER: Back on the record.

7 Here marks the beginning of tape number three in

8 the deposition of Otis Wilson. The time is

9 2:39 p.m.

10 Please, continue.

11 BY MR. GANT:

12 Q. Welcome back, Mr. Wilson. During the

13 break we just took did you have discussions with

14 any counsel for IBM about any of my questions today

15 or any of your answers to my questions?

16 A. I did not.

17 MR. MARRIOTT: Let me just say too,

18 generally, Counsel, you understand he's counsel --

19 we're counsel for the witness as well. So you --

20 you continue to describe us as counsel for IBM.

21 We are counsel for Mr. Wilson. So if

22 you're going to refer to us, I'd appreciate being

23 referred to as counsel for the witness, Mr. Wilson,

24 as well as counsel for IBM. Okay?

25 MR. GANT: I'm sure you can imagine my

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1 response, which is that I get to, of course,

2 formulate the questions myself, and you can ask any

3 questions when I'm done.

4 MR. MARRIOTT: Sure. If you think it's

5 fair to continually refer to us solely as counsel

6 to IBM, then -- then you can do that.

7 MR. GANT: I don't think that's what I

8 said, but, in any event --

9 MR. MARRIOTT: I understand you get to

10 formulate -- and if you think it's fair to

11 formulate in that way, then go ahead.

12 MR. GANT: I absolutely do. If you think

13 it's fair to represent both IBM and Mr. Wilson, I

14 think it's fair for me to explain it that way on

15 the record.

16 Shall we carry on?

17 MR. MARRIOTT: Well, I think we should

18 go -- resume with the examination, as opposed to us

19 carrying on.

20 MR. GANT: I agree.

21 BY MR. GANT:

22 Q. Mr. Wilson, in various places in your

23 declarations you described your responsibilities at

24 AT&T, UNIX licensing; correct?

25 A. That's correct.



1 Q. And I believe in some places you used the  
2 phrase that you were responsible for certain  
3 things. Do you recall that?  
4 A. Yes.  
5 Q. And in other places you used the term  
6 familiar. Do you remember that?  
7 A. (NO AUDIBLE ANSWER WAS GIVEN)  
8 Q. I could direct you, for example, to  
9 Exhibit 76, your declaration. In paragraph eight  
10 you say, "I'm also familiar with the following  
11 agreements between AT&T and Sequent." Do you  
12 recall that?  
13 A. Yes.  
14 Q. What do you mean by the term familiar as  
15 used in your declarations?  
16 A. I was aware -- I had knowledge of those  
17 agreements and how they were put together and who  
18 executed them. So on and so forth.  
19 Q. And when you use the term familiar, I  
20 gather that you're not suggesting that you knew  
21 everything about either the intent of the parties  
22 or the meaning of a particular agreement --  
23 MR. MARRIOTT: Objection as to --  
24 Q. -- is that right?  
25 MR. MARRIOTT: Objection as to form.

1 THE WITNESS: I mean exactly that I did.  
2 In other words, that was my responsibility, to know  
3 the intent of the parties, as well as the intention  
4 of the language in those agreements.  
5 BY MR. GANT:  
6 Q. Okay. Well, let me break it down. When  
7 you say that you're familiar with a particular  
8 agreement, is it your testimony that you knew  
9 absolutely everything with respect to the intent of  
10 each of the parties to that agreement?  
11 MR. MARRIOTT: Objection as to form.  
12 THE WITNESS: With regard to AT&T's  
13 intent, I guess I'm fairly clear. To the degree  
14 that the licensee stated what their intention was,  
15 I -- I know that.  
16 BY MR. GANT:  
17 Q. So it's your testimony that with respect  
18 to a particular agreement, that you described  
19 yourself as being familiar with, that you knew  
20 everything about AT&T's intent with respect to that  
21 particular agreement?  
22 MR. MARRIOTT: Objection as to form.  
23 Asked and answered.  
24 THE WITNESS: I think that's fair. In  
25 other words, you say, "everything." I mean

1 that's -- to the best of my knowledge, what was  
2 contained in those agreements I was responsible  
3 for. I was the agent responsible for AT&T's  
4 intent, having it reflect in the agreements.  
5 MR. GANT: With all due respect, I don't  
6 think you answered my question. So I'm going to  
7 ask that it be read back, and if you could do your  
8 best to answer my question, I'd appreciate it.  
9 (PREVIOUS QUESTION THEN READ)  
10 MR. MARRIOTT: Is that a question or a  
11 statement?  
12 MR. GANT: It's a question. Can you  
13 answer the question?  
14 MR. MARRIOTT: Objection. Asked and  
15 answered.  
16 THE WITNESS: Yes.  
17 BY MR. GANT:  
18 Q. When you described yourself as being  
19 familiar with a particular agreement, is it your  
20 testimony that you are the only person who was  
21 familiar with the intent of AT&T with regard to  
22 that agreement?  
23 A. No, I did not. I did not.  
24 Q. I take it, you acknowledge, Mr. Wilson,  
25 that others, who were at AT&T at the time of the

1 particular agreements discussed in your  
2 declaration, may well have had or have different  
3 recollections about the intent of AT&T with respect  
4 to that agreement?  
5 MR. MARRIOTT: Objection as to form. It  
6 lacks foundation, calls for speculation.  
7 THE WITNESS: Yeah. The problem I'm  
8 having is you're saying, "AT&T." I mean that's  
9 a -- that was a huge place. I know -- if you could  
10 narrow it, I mean I could -- because I don't know  
11 what everybody in AT&T had on their minds.  
12 BY MR. GANT:  
13 Q. You don't know what everyone at AT&T had  
14 in their minds with respect to the UNIX licensing  
15 agreements?  
16 A. That's correct.  
17 Q. You acknowledge, Mr. Wilson, that the  
18 agreements that are attached as tabs to your  
19 declaration were executed many years ago; correct?  
20 A. That's correct.  
21 Q. Almost 20 years ago now; isn't that right?  
22 A. '85, '95. Yes, sir. That's correct.  
23 Q. I believe you testified earlier today in  
24 response to questions from Mr. Marriott, your  
25 counsel, and also counsel for IBM in this case,

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1 that you were surprised when you saw some of the  
 2 documents, that things that came back to you. Do  
 3 you recall saying that earlier today?  
 4 MR. MARRIOTT: Objection as to form. I  
 5 think that misstates the testimony.  
 6 THE WITNESS: I don't recall the context  
 7 of when that was stated. I mean if you could --  
 8 BY MR. GANT:  
 9 Q. You don't recall testifying earlier today  
 10 that you --  
 11 A. Oh, yeah.  
 12 Q. -- that you were surprised that your  
 13 recollection of the documents attached to your  
 14 declarations came back to you so quickly when you  
 15 reviewed them with counsel for IBM?  
 16 A. Yes. I recall making that statement. And  
 17 what I was talking about, once -- once I started  
 18 looking at them, I mean faces came back in, the  
 19 environment in which they were negotiated. All of  
 20 those kinds of things came back.  
 21 Q. I gather that you were surprised, because  
 22 these agreements and the events related to them  
 23 occurred so long ago; is that right?  
 24 A. That's correct.  
 25 Q. And being human, I assume that you, like

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1 everyone else, has a fallible memory; isn't that  
 2 right?  
 3 MR. MARRIOTT: Objection as to the form.  
 4 THE WITNESS: If that's attributable to  
 5 all humans, I guess so.  
 6 BY MR. GANT:  
 7 Q. Well, do you acknowledge that your --  
 8 A. Of course.  
 9 Q. -- memory is fallible?  
 10 A. Yes.  
 11 (DISCUSSION OFF THE RECORD).  
 12 MR. GANT: Okay. Let's take a quick  
 13 break.  
 14 THE VIDEOGRAPHER: One moment, please.  
 15 Going off the record. The time is  
 16 2:46 p.m.  
 17 (RECESS TAKEN AT 2:46 P.M. TO 2:48 P.M.)  
 18 (MR. DAVIS AND MR. NOTO ARE NOT PRESENT)  
 19 MR. GANT: Can you just read back the Q  
 20 and the A. Then we'll go back on. So I remember  
 21 where we were and so the witness does.  
 22 (REQUESTED PORTION OF THE RECORD READ)  
 23 THE VIDEOGRAPHER: Back on the record.  
 24 The time is 2:48 p.m.  
 25 Please, continue.

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1 BY MR. GANT:  
 2 Q. Mr. Wilson, you weren't the only person at  
 3 AT&T involved in the negotiations of UNIX licenses  
 4 and the drafting of those licenses, were you?  
 5 A. I was not.  
 6 Q. I gather there were a significant number  
 7 of people involved in that; correct?  
 8 MR. MARRIOTT: Objection as to form.  
 9 (MR. DAVIS THEN RE-ENTERED THE ROOM)  
 10 THE WITNESS: A significant -- I wouldn't  
 11 say significant, because it was a very small  
 12 organization.  
 13 BY MR. GANT:  
 14 Q. During what period of time at AT&T were  
 15 you working on negotiating UNIX licenses?  
 16 A. From 1980 through 1991.  
 17 Q. And let's focus for now on a narrow band  
 18 of that time from, say, 1984 to 1990. Okay?  
 19 A. (WITNESS NODS HEAD UP AND DOWN)  
 20 Q. Can you tell me who the people were who  
 21 were involved in working on UNIX licensing at AT&T?  
 22 A. Obviously, the people in our -- in my  
 23 organization in Greensboro, and as we -- as it got  
 24 larger, we expanded. We opened an office in Tokyo.  
 25 Q. When did that occur?

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1 A. In that time period.  
 2 And also in London. And the -- those  
 3 offices use what we call boilerplate agreements.  
 4 In other words, the language, the interpretations  
 5 all came out of the Greensboro office.  
 6 Q. And during that period of time, '84 to  
 7 '90, who worked in the Greensboro office, working  
 8 on UNIX licensing?  
 9 A. All the names you mean?  
 10 Q. Yes, please.  
 11 A. Yeah. Dave Frasure, which you already  
 12 know. Steve Edson.  
 13 Q. How do you spell his last name?  
 14 A. E-D-S-O-N.  
 15 Chuck Green, Steve Duksonvich.  
 16 Q. How do you spell his last name?  
 17 A. D-U-K-S-O-N-V-I-C-H.  
 18 Now I forgot who I told you.  
 19 Q. You told me Dave Frasure, Steve Edson,  
 20 Chuck Green, Steve Duksonvich?  
 21 A. Max Wicker.  
 22 Q. Is it Wicker?  
 23 A. W-I-C-K-E-R.  
 24 Q. Uh-huh.  
 25 A. Evelyn Rochelle.

1 Q. I'm sorry. The name again?  
 2 A. Evelyn Rochelle.  
 3 Nina Ricci, R-I-C-I.  
 4 Q. Anyone else?  
 5 A. That's it. I mean that's -- that's all I  
 6 can remember right now. These were the -- go  
 7 ahead.  
 8 Q. Who was your supervisor during -- from the  
 9 entire time you were at AT&T, working on UNIX  
 10 licensing, and -- and if there was more than one,  
 11 please, tell me who they were at each point in  
 12 time?  
 13 A. Initially it was Dick Sapazzian.  
 14 Q. Do you know how to spell the last name?  
 15 A. You're on your own on that one.  
 16 Q. Did you once know?  
 17 A. Yes. S-A --  
 18 Q. It's a good thing to know how to spell  
 19 your boss' last name?  
 20 A. Yes. S-A-P-A -- I forget now.  
 21 Q. Okay. During what period of time was  
 22 Mr. Sapazzian your superior?  
 23 A. Probably '81 -- '80 to '82 or '3.  
 24 Q. Okay. And then who became your --  
 25 A. You don't want me to speculate; right?

1 Q. Right.  
 2 MR. MARRIOTT: I'm sorry. I missed that  
 3 exchange.  
 4 MR. GANT: He said, "You don't want me to  
 5 speculate; right?" And my --  
 6 MR. MARRIOTT: Was that speculation or --  
 7 THE WITNESS: The exact date when he  
 8 changed would be speculation. I can tell you the  
 9 sequence of events.  
 10 BY MR. GANT:  
 11 Q. You can -- if you're approximating, then  
 12 you should say you're approximating.  
 13 Are you still answering the question, or  
 14 should I --  
 15 A. No. I'm still answering the question.  
 16 Q. Okay.  
 17 A. Dick Sapazzian. I can see his face. I  
 18 can't remember his name right now. Bob Guffey.  
 19 Q. That was your next supervisor after  
 20 Mr. Sapazzian?  
 21 A. Uh-huh, yes.  
 22 Q. Do you remember how to spell his last  
 23 name?  
 24 A. G-U-F-F-E-Y.  
 25 And then Mike Defazio, D-E-F-A-Z-I-O.

1 Q. Mike Defazio was your supervisor?  
 2 A. Uh-huh.  
 3 Q. And what period of time was that?  
 4 A. That sequence. It was Dick Sapazzian, Bob  
 5 Guffey. Then --  
 6 Q. Do you remember approximately during what  
 7 years Mr. Defazio was your supervisor?  
 8 A. Probably the last four years.  
 9 Q. From roughly '87 to '91?  
 10 A. Uh-huh.  
 11 Q. He was your last supervisor?  
 12 A. Yes.  
 13 Q. And for how many years was Mr. Guffey your  
 14 supervisor approximately?  
 15 A. Approximately three years.  
 16 Q. From roughly '84 to '87?  
 17 A. Roughly, yes. Uh-huh.  
 18 Q. Now, could you explain what your  
 19 relationship was to your supervisors? What their  
 20 role was vis-a-vis your responsibilities?  
 21 A. Dick Sapazzian was responsible for the --  
 22 several areas of intellectual property. Like we  
 23 had software. We had technical agreements,  
 24 technical information, and so that was -- he was  
 25 responsible for several areas of intellectual

1 property.  
 2 And I had one of them. I was a negotiator  
 3 in the software area. Then we became more focused  
 4 on the UNIX operating system. That was when Bob  
 5 Guffey came in. He was responsible mainly for  
 6 operating systems software and a little of the  
 7 other technology.  
 8 Q. As -- I'm sorry. I didn't mean to  
 9 interrupt you.  
 10 A. And then Mike Defazio's primary  
 11 responsibility was development, and -- with  
 12 software being one of the areas, because it was  
 13 associated with the software development that he  
 14 was involved. So he had both the technical side  
 15 and the licensing side.  
 16 Q. And all of those gentlemen supervised you  
 17 in your responsibilities for -- on UNIX licensing  
 18 issues; correct?  
 19 A. Yes.  
 20 Q. Including the negotiation of licenses; is  
 21 that right?  
 22 A. Yes.  
 23 Q. And as your ultimate supervisor, is it  
 24 accurate that Mr. Sapazzian and Mr. Guffey and  
 25 Mr. Defazio were familiar with the intent of AT&T

1 with respect to UNIX licenses?  
 2 MR. MARRIOTT: Objection as to form.  
 3 Lacks foundation.  
 4 THE WITNESS: Yes, they were.  
 5 BY MR. GANT:  
 6 Q. Yes?  
 7 A. Yes, they were. Yes.  
 8 Q. Are any of the people you mentioned  
 9 attorneys, who worked on UNIX licensing with you?  
 10 A. No, they're not.  
 11 Q. Did you work with AT&T attorneys on UNIX  
 12 licensing issues?  
 13 A. Yes.  
 14 Q. Which attorneys?  
 15 A. Geoff Green.  
 16 Q. How do you spell the first and last name,  
 17 please?  
 18 A. G-E-O-F-F. Green, G-R-E-E-N.  
 19 Dave Horwitz. Horwitz, H-O-R-W-I-T-Z.  
 20 They worked out of a pool of intellectual property  
 21 attorneys, and those were the primary people I  
 22 dealt with. Any given day you might go to someone  
 23 else in the group --  
 24 Q. And where --  
 25 A. -- but I don't remember.

1 Q. I'm sorry.  
 2 Where were those gentlemen based at the  
 3 time they were working on UNIX licensing issues?  
 4 A. In Greensboro, North Carolina.  
 5 Q. Were those the principal attorneys that  
 6 you dealt with?  
 7 A. Yes.  
 8 Q. Were there any others that you can recall?  
 9 A. Only from the standpoint that any given  
 10 day you might -- you might need to talk to someone.  
 11 You would go to anybody in that -- in that group.  
 12 Q. And what were the responsibilities of  
 13 AT&T's attorneys, who worked on UNIX licensing  
 14 issues?  
 15 MR. MARRIOTT: Objection as to form.  
 16 THE WITNESS: They were responsible for  
 17 ensuring that the -- like the intent and the -- the  
 18 agreements that were reached were reflected in  
 19 legal documents in a way that they were legally  
 20 correct.  
 21 BY MR. GANT:  
 22 Q. I take it then that the attorneys for  
 23 AT&T, who worked on UNIX licensing issues, were  
 24 very familiar with AT&T's intent with respect to  
 25 those licenses?

1 MR. MARRIOTT: Objection as to form.  
 2 THE WITNESS: Yes, they were.  
 3 BY MR. GANT:  
 4 Q. You mentioned earlier, and we looked at  
 5 some documents today, where Mr. Frasure signed a  
 6 document, quote, unquote, for you. Do you recall  
 7 that?  
 8 A. Yes.  
 9 Q. Can you explain what it means when  
 10 Mr. Frasure or someone else signs, quote, unquote,  
 11 for you?  
 12 (MR. NOTO THEN RE-ENTERED THE ROOM)  
 13 THE WITNESS: It was a -- it was a  
 14 delegation that I made to -- to Dave Frasure, which  
 15 was sometimes necessary if I was at another  
 16 conference or a meeting or involved with -- with  
 17 other business at the particular time that the  
 18 agreement was needed to be signed.  
 19 BY MR. GANT:  
 20 Q. If both you and Mr. Frasure were present,  
 21 would you allow Mr. Frasure to sign a document for  
 22 you?  
 23 MR. MARRIOTT: Objection as to form.  
 24 THE WITNESS: I would probably sign it  
 25 when we were both present.

1 BY MR. GANT:  
 2 Q. Why is that?  
 3 A. Because I -- I had the responsibility to  
 4 sign those agreements; unless I delegated it, and  
 5 there would be no need to delegate it, if I was --  
 6 if I was there.  
 7 Q. In the circumstances when you delegated  
 8 responsibility for signing a particular document,  
 9 would you in all cases review the final document  
 10 before it was signed?  
 11 A. Yes, I would.  
 12 MR. MARRIOTT: Object as to form.  
 13 THE WITNESS: Yes, I would.  
 14 BY MR. GANT:  
 15 Q. What would happen if there was a situation  
 16 where you were out of town when a document was  
 17 being put into final form?  
 18 MR. MARRIOTT: Objection as to form.  
 19 THE WITNESS: The agreements were pretty  
 20 much boilerplate, if that's -- if that's a good  
 21 term to use. In other words, the -- the language  
 22 reflected in the agreement was the language we used  
 23 over and over again.  
 24 Any specific deviation or modification or  
 25 changes to that language, we would have discussed

1 many times before it got to the point of being in  
2 the agreement for execution.  
3 So maybe on a given day when that thing  
4 had to be signed or when it came back to be signed,  
5 I was -- I had already viewed the end -- the  
6 content of it. And so I relied on the licensing,  
7 Dave Frasure and others to make sure all of the  
8 pages were in there and everything was --  
9 BY MR. GANT:  
10 Q. So it's your testimony that any document  
11 that was signed for you or on your behalf, you were  
12 familiar with all of the substance and details of  
13 the document before it was signed by someone at  
14 AT&T?  
15 A. Yes.  
16 Q. And I presume you would not have  
17 authorized someone to sign a document on your  
18 behalf, if the document wasn't completely accurate  
19 and did not reflect AT&T's positions --  
20 MR. MARRIOTT: Objection as to form.  
21 Q. -- is that right?  
22 A. That's correct. In other words, I didn't  
23 do that lightly.  
24 Q. You didn't do what lightly?  
25 A. Delegate that responsibility. In other

1 words, whoever I delegated, I trusted they would  
2 have the same understanding that I would.  
3 Otherwise, I would not have made that delegation.  
4 Q. And your understanding was what?  
5 MR. MARRIOTT: Objection as to the form.  
6 MR. GANT: I withdraw that question. Let  
7 me make it clearer.  
8 BY MR. GANT:  
9 Q. When you delegated responsibility to  
10 someone to sign a document on your behalf, did you  
11 take steps to ensure that the document was accurate  
12 and reflected the policies and views of AT&T?  
13 A. Yes. In other words, I did that before I  
14 made the delegation. So I made sure that the  
15 person I was delegating to was as familiar as I was  
16 and would reflect the same thing that I would do,  
17 if I was there signing it.  
18 Q. So you were confident --  
19 A. Yes.  
20 Q. -- that in all instances -- you were  
21 confident that in all instances when someone signed  
22 a document on your behalf that you had prior to the  
23 signature being applied carefully examined the  
24 document to ensure that it was accurate and  
25 reflected AT&T's views and policies?

1 MR. MARRIOTT: Objection as to form.  
2 THE WITNESS: Yes.  
3 BY MR. GANT:  
4 Q. If someone testified that you, Mr. Wilson,  
5 generally became involved in a particular license  
6 agreement after the negotiations had been  
7 completed, would you agree with that statement?  
8 MR. MARRIOTT: Objection as to form.  
9 Could I hear the question back again,  
10 please, too.  
11 (PREVIOUS QUESTION THEN READ)  
12 MR. MARRIOTT: Objection as to form.  
13 Vague, calls for speculation.  
14 THE WITNESS: I'm not sure what -- when  
15 you say, "after the negotiations had been  
16 completed," I'm not sure what's meant by that.  
17 BY MR. GANT:  
18 Q. At what point did you generally become  
19 involved in the development and agreement of a  
20 particular UNIX license, if there was a typical  
21 scenario?  
22 A. A typical scenario. I was involved at the  
23 beginning. Most of the agreements, as I mentioned  
24 earlier, were pretty much boilerplate. If there  
25 was a deviation from the standard language in the

1 software agreement, we went back and forth until  
2 that was clear, and then reduced it to language  
3 that we could use in our agreement.  
4 So in most cases it was an insertion of an  
5 understanding or a drafting of a side letter with  
6 those understandings reflected in that letter. So  
7 those -- the content of those things had already  
8 been approved before they could go out to a  
9 licensee.  
10 Q. AT&T had a standard software licensing  
11 agreement for UNIX?  
12 A. Yes.  
13 MR. MARRIOTT: Objection as to form.  
14 Q. And AT&T also had modifications to that  
15 agreement, which it entered into with particular  
16 licensees?  
17 MR. MARRIOTT: Objection as to form.  
18 THE WITNESS: Yeah. We had a standard  
19 agreement, and we had, for lack of a better term,  
20 standard modifications. In other words, any -- any  
21 change from the standard licensing agreement was  
22 reflected in a clarification or a side letter, but  
23 that was available to all of our licensees.  
24 So these -- so -- so the boilerplate  
25 agreement kept evolving based on any type of

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1 negotiations that caused a change or an  
 2 interpretation in that agreement.  
 3 BY MR. GANT:  
 4 Q. You mentioned that AT&T attorneys were  
 5 involved in developing UNIX licenses; correct?  
 6 A. Yes.  
 7 Q. Why did they need to be involved?  
 8 MR. MARRIOTT: Objection as to form.  
 9 THE WITNESS: Just like on this particular  
 10 declaration. In other words, the attorney ensured  
 11 that what we were trying to do was in the proper  
 12 language that would be legally correct in the final  
 13 document. They were never involved in the actual  
 14 negotiations.  
 15 BY MR. GANT:  
 16 Q. And it was AT&T's view that that  
 17 responsibility was best carried out by an attorney,  
 18 because the legal language would ultimately  
 19 determine the meaning of the agreements; is that  
 20 right?  
 21 MR. MARRIOTT: Objection as to form.  
 22 Lacks foundation, calls for speculation, seeks a  
 23 legal conclusion from a lay witness, vague.  
 24 THE WITNESS: As I -- as I understood, the  
 25 attorneys were there to make sure that what we

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1 were -- what we were doing was legally correct,  
 2 just like you do in any business plan or whatever.  
 3 They had to make sure that what we were  
 4 doing was -- was legally correct, and that was  
 5 their responsibility. And a lot of time was spent,  
 6 you know, back and forth with the attorneys to make  
 7 sure that what we were saying was, in fact, what we  
 8 meant in the language that was finally put out.  
 9 Q. And was it the responsibility of the  
 10 attorneys to make sure that what AT&T meant was  
 11 expressed in appropriate language?  
 12 MR. MARRIOTT: Objection as to form.  
 13 THE WITNESS: I think that was the  
 14 responsibility of the negotiators.  
 15 BY MR. GANT:  
 16 Q. I thought you just explained that the  
 17 attorneys --  
 18 A. Were making sure that it was legally  
 19 correct, in other words, but the intent, what was  
 20 trying to be accomplished, was the responsibility  
 21 of the negotiator. They were the ones that sat  
 22 down with the licensee, and they would bring it  
 23 back.  
 24 And then the attorney would draft the  
 25 language, and we'd talk. Then sometimes we'd go

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1 back to the licensee, and their attorneys would  
 2 look at it and say, what does this mean, that kind  
 3 of thing. So it was -- it was having someone to  
 4 make sure that the language was reflective in a  
 5 legal way what you were trying to do.  
 6 Q. So it was the responsibility of AT&T's  
 7 attorneys to find out the intent of the parties  
 8 with respect to a particular UNIX license and then  
 9 put that into appropriate legal language?  
 10 MR. MARRIOTT: Objection as to form.  
 11 Misstates the testimony.  
 12 THE WITNESS: Yes.  
 13 BY MR. GANT:  
 14 Q. You mentioned earlier in response to a  
 15 question from Mr. Marriott -- or colloquy, I think,  
 16 between the three of us about privileged  
 17 communications between AT&T's attorneys and others.  
 18 Before that issue arose this morning what  
 19 was your understanding about Mr. Marriott's  
 20 questions when he asked about -- questions about  
 21 AT&T? Were you leaving out of your answer anything  
 22 that had been communicated to you by AT&T's  
 23 attorneys?  
 24 A. I did not. No.  
 25 Q. Could you take a look at Exhibit 76, the

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1 declaration that you executed in April 2004.  
 2 Before we do that, let me ask you another question  
 3 about Mr. Frasure. You mentioned that you  
 4 recruited him. Do you recall that?  
 5 A. Yes.  
 6 Q. And I believe one of the things you said  
 7 in describing your recruitment of Mr. Frasure was  
 8 that you were interested in his expertise in  
 9 software. Mr. Frasure is not an expert in computer  
 10 code, is he?  
 11 MR. MARRIOTT: Objection as to form.  
 12 Lacks foundation, vague.  
 13 THE WITNESS: I'm having trouble with the  
 14 definition of expert, but he was a -- he was in our  
 15 MIS department, working with computers and code,  
 16 you know, at the time. So he had a very good  
 17 background. Expert maybe rises to another level.  
 18 I'm not sure.  
 19 BY MR. GANT:  
 20 Q. Okay. Well, if Mr. Frasure testified that  
 21 he didn't consider himself to be an expert in  
 22 computer code, would you have any reason to  
 23 disagree with him?  
 24 A. No.  
 25 MR. MARRIOTT: Objection as to form.

1 Q. Could you take a look at page six of your  
2 April 2004 declaration?  
3 A. (THE WITNESS COMPLIED)  
4 Q. Do you have that in front of you, sir?  
5 A. Yes, I do.  
6 Q. Do you see the first line of that page,  
7 where it says, "These provisions set forth our  
8 licensees' rights"?  
9 A. Yes, I do.  
10 Q. It's the case, isn't it, that AT&T's UNIX  
11 license agreements set forth both rights and  
12 obligations of both parties to the agreement?  
13 MR. MARRIOTT: Objection as to form.  
14 THE WITNESS: Yes, they did.  
15 BY MR. GANT:  
16 Q. Two lines down, you say, "At least as I  
17 understood these sections," and then the sentence  
18 continues on. It's the case, isn't it, that others  
19 at AT&T may have had different understandings about  
20 the meaning of particular provisions of AT&T's UNIX  
21 license agreements than you have?  
22 MR. MARRIOTT: Just let me get my  
23 objection in. Objection as to form. Calls for  
24 speculation and lacks foundation.  
25 You may answer.

1 THE WITNESS: Yeah. I don't know what --  
2 I mean I don't know when you're referencing other  
3 people. I mean I -- I know what was the intent --  
4 you know, with regard to the intent of the  
5 licensees, and I was -- our licensing group. But  
6 these other people, I don't know. I mean I don't  
7 know.  
8 BY MR. GANT:  
9 Q. Okay. But my -- let's focus in on the  
10 folks in the licensing group.  
11 A. Okay.  
12 Q. Prior to executing your declaration --  
13 strike that.  
14 Prior to executing your declarations in  
15 this case did you speak with any of the people you  
16 identified to me a few moments ago who worked in  
17 Greensboro or on UNIX licensing?  
18 A. I did not.  
19 MR. MARRIOTT: Just to be clear, you mean  
20 after he left the company?  
21 MR. GANT: Yes. That is what I mean.  
22 BY MR. GANT:  
23 Q. Is that how you understood my question?  
24 A. Yes.  
25 MR. MARRIOTT: So the record is clear.

1 MR. GANT: I appreciate that. That's a  
2 fair and helpful clarification.  
3 BY MR. GANT:  
4 Q. So during the 12-year period from when you  
5 left AT&T and the time you executed your first  
6 declaration in this case, did you speak with any of  
7 the folks who worked with you in Greensboro on UNIX  
8 licensing and ask them about their intent with  
9 respect to the UNIX licenses?  
10 A. No.  
11 Q. I take it then that you don't know for a  
12 fact one way or another whether any or all of those  
13 individuals share your views about what AT&T  
14 intended with respect to its UNIX licenses?  
15 MR. MARRIOTT: Objection as to form.  
16 THE WITNESS: I would say just the  
17 opposite. I think they did know my views. And I  
18 had the -- the responsibility -- they were in the  
19 organization, and so any dialogue about intent or  
20 the meaning of the language, we -- we discussed  
21 that and came to -- to a resolution.  
22 (MR. DAVIS THEN EXITED THE ROOM)  
23 THE WITNESS: If they continued to  
24 disagree, I was not aware of it. In other words,  
25 that was -- that was part of the process.

1 BY MR. GANT:  
2 Q. All right. I -- again, no disrespect. I  
3 think you didn't answer my question.  
4 A. Would you, please, ask it again?  
5 MR. GANT: I'll -- I'll move to strike the  
6 question, and I'll ask it to be read back and see  
7 how we do.  
8 MR. MARRIOTT: And I -- and, just so the  
9 record is clear, I think you did answer his  
10 question. And I think there's no basis for a  
11 motion to strike, but he can have it read back.  
12 If you have a different answer, you can  
13 give it.  
14 (PREVIOUS QUESTION THEN READ)  
15 BY MR. GANT:  
16 Q. Do you understand the question?  
17 A. Yes.  
18 And I would say they did know.  
19 Q. My -- maybe it's my question that's bad.  
20 Let me explain what I'm trying to get at and then  
21 formulate it in a way that will be clear for the  
22 record.  
23 What I'm trying to understand is whether  
24 you know for a fact that any of the people who used  
25 to work with you in Greensboro on UNIX licensing

1 today share your recollection and understanding of  
2 what AT&T's intent was with respect to UNIX  
3 licensing? Do you understand what I'm getting at?

4 A. I think you're saying today -- I mean have  
5 I talked with them in the last ten years and find  
6 out do they still agree with their views; is that  
7 what you're saying?"

8 Q. Yes. That's what I'm trying to --

9 A. I haven't talked -- as I said earlier, I  
10 have not -- I have not talked with them about this  
11 since I retired.

12 Q. You have no idea whether or not the  
13 individuals who worked with you on UNIX licensing  
14 in Greensboro share your views and understandings  
15 about the meaning of --

16 (MR. DAVIS THEN RE-ENTERED THE ROOM)

17 MR. GANT: -- UNIX license agreements  
18 entered into by AT&T?

19 MR. MARRIOTT: Objection as to form. I  
20 think he -- I think the question is -- is  
21 confusing, and, therefore, I object on form. If  
22 you can -- if you understand it, please, answer.

23 THE WITNESS: Yeah. I think they do. In  
24 other words, the way you phrased it that time -- in  
25 other words, we were in agreement about -- we had

1 misremembering things; correct?

2 MR. MARRIOTT: Objection as to form.

3 THE WITNESS: It's possible, but it's --  
4 that's the reason I read over them again.

5 BY MR. GANT:

6 Q. That's the reason you read over what?

7 A. That's the reason -- like you have notes  
8 and things. You go back, and you -- you go back,  
9 because you -- you could forget, but you go back,  
10 and you -- you look at your notes. In this case we  
11 had the agreements to look at, and --

12 Q. Did you look at any notes to refresh your  
13 recollection before signing your declarations?

14 A. Well, I looked at these declarations and  
15 the exhibits.

16 Q. You looked at --

17 A. I was using the -- the thing -- like, in  
18 other words, you make notes about something, a  
19 class or whatever. That's what you go back to  
20 refresh, you know, what you're -- your memory.

21 Q. You testified earlier, though, that you  
22 only reviewed parts of the exhibits to your  
23 declaration before signing your declaration?

24 MR. MARRIOTT: Objection as to form.  
25 Misstates testimony. He testified he didn't review

1 to be in agreement, because that was our  
2 responsibility, to execute these things fairly and  
3 equitable to all of our licensees.

4 So if their minds have changed over the  
5 last ten years after we've all left AT&T, I mean  
6 I'm not aware of that. But I know at the time we  
7 were working together up until the time I left we  
8 were in agreement. And why I say that is because  
9 if there was any type of agreement (SIC), that's  
10 what we would discuss and -- and get -- you know,  
11 get hashed out before we go forward.

12 Q. Is it possible that your particular  
13 recollection of what those agreements were may be  
14 inaccurate?

15 MR. MARRIOTT: Objection as to form.

16 THE WITNESS: As you mentioned earlier, I  
17 may forget things, but I think the -- to the degree  
18 of fallibility of -- of the human mind, maybe, but  
19 I'm pretty comfortable with the agreements, the  
20 intent and those kinds of things.

21 BY MR. GANT:

22 Q. But these events occurred almost two  
23 decades ago; correct?

24 A. Yes.

25 Q. And it's possible that you may be

1 in their entirety at a certain point in time every  
2 page of the attachments:

3 MR. GANT: Mr. Marriott, I think you are  
4 bordering on coaching on this and several other  
5 occasions. If you have -- I limited my objections  
6 to discrete descriptions of the nature of the  
7 objection to allow you to cure, if you were  
8 interested. And I would request that you extend me  
9 the same courtesy, rather than interrupting the  
10 examination.

11 MR. MARRIOTT: Counsel, I don't intend to  
12 interrupt your examination, and I don't intend to  
13 extend you any discourtesy. I, at the same time,  
14 don't think there's anything inappropriate about  
15 that -- about that objection, when I think the  
16 question misstates the testimony. So --

17 MR. GANT: All you have to say is  
18 mischaracterizes testimony. I'm sure you can do  
19 that.

20 Could you read back the question and  
21 his --

22 MR. MARRIOTT: I appreciate your vote of  
23 confidence. I'll --

24 BY MR. GANT:

25 Q. Do you need the question read back?



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1 A. No.  
 2 MR. MARRIOTT: I think I do. What's --  
 3 what's the question?  
 4 (PREVIOUS QUESTION THEN READ)  
 5 THE WITNESS: That's incorrect. I did  
 6 not -- I don't -- I did not state that. I said  
 7 that I reviewed -- reviewed parts of it during the  
 8 initial meeting with counsel here in Greensboro.  
 9 When they actually sent the draft and the  
 10 declaration and the exhibits, I reviewed those in  
 11 their entirety before signing the agreement.  
 12 BY MR. GANT:  
 13 Q. I see. Okay. Thank you for that  
 14 clarification.  
 15 Did they send exhibits when they sent you  
 16 the first draft?  
 17 A. Yes, they did.  
 18 Q. And those were the only things you looked  
 19 at to try and refresh your recollection about the  
 20 events of 12 -- 15, 20 years ago; correct?  
 21 MR. MARRIOTT: Objection as to the form.  
 22 THE WITNESS: That's correct.  
 23 BY MR. GANT:  
 24 Q. Did you consider taking any other steps to  
 25 refresh your recollection and assure yourselves --

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1 yourself that your sworn testimony was accurate?  
 2 A. I did not.  
 3 Q. Let's look -- go back to page six of your  
 4 April 2004 declaration. Five lines down you used  
 5 the phrase -- let me just read the whole sentence  
 6 for context.  
 7 "At least as I understood these sections  
 8 and discussed them with our licensees, they do not,  
 9 and were not intended to, restrict our licensees'  
 10 right to use, export, disclose or transfer their  
 11 own products and source code." And then it  
 12 continues on.  
 13 My question is: What did you mean by the  
 14 terms; "own products"?  
 15 A. Anything -- in this context, anything  
 16 other than our software product that was  
 17 distributed under the licensing agreement.  
 18 Q. And software product is a defined term in  
 19 the standard software license?  
 20 A. Yes.  
 21 Q. And that's what you were referring to in  
 22 your answer a moment ago?  
 23 A. Yes.  
 24 (DISCUSSION OFF THE RECORD)  
 25 BY MR. GANT:

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1 Q. The next clause. You say, "As long as  
 2 they did not use, export, disclose or transfer."  
 3 What did you mean by, "use"?  
 4 A. In other words, an execution of the rights  
 5 granted to them under the software agreement.  
 6 Those -- those stipulations in the agreement  
 7 defined what they could do with the source code or  
 8 the software products.  
 9 Q. Well, you have, "use," here specifically  
 10 set out as a separate term. I'm trying to  
 11 understand what you meant when you signed this  
 12 declaration.  
 13 A. Their rights -- their -- their -- their  
 14 use rights were defined in the software agreement.  
 15 Q. Whose use rights?  
 16 A. The licensees.  
 17 Q. And there were restrictions on licensees'  
 18 use rights in the UNIX licenses; correct?  
 19 A. Yes, as well as the others, "export,  
 20 disclose."  
 21 Q. And those use restrictions covered the  
 22 software product as defined in the agreement;  
 23 correct?  
 24 A. That's correct.  
 25 MR. MARRIOTT: Can I just have the

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1 question back. I may or may not have an objection  
 2 to the form. Make sure I've got it.  
 3 (PREVIOUS QUESTION THEN READ)  
 4 MR. MARRIOTT: Objection as to form.  
 5 BY MR. GANT:  
 6 Q. And section 2.01 of the standard software  
 7 agreement included in the term software product  
 8 derivative works and modifications; correct?  
 9 MR. MARRIOTT: Objection as to form.  
 10 THE WITNESS: Yes.  
 11 BY MR. GANT:  
 12 Q. If you could, look two lines down, at the  
 13 end of that paragraph. Your declaration uses the  
 14 term, "own original work." What did you mean by,  
 15 "own original work," when you signed your  
 16 declaration?  
 17 A. Anything that was developed by our  
 18 licensee was considered their -- you know, their  
 19 original work. In other words, it was not -- it  
 20 was theirs.  
 21 Q. When you say, "developed," in your answer  
 22 that you just gave, what do you mean by that?  
 23 A. They wrote the code.  
 24 Q. You're not a code expert; correct?  
 25 A. That's correct.

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1 Q. I presume -- well, strike that.  
 2 Do you agree that it is a -- it requires  
 3 technical expertise to determine whether or not an  
 4 entity's code is their own --  
 5 MR. MARRIOTT: Objection as to form.  
 6 Q. -- as you used the term?  
 7 A. Yes. And we had -- we had those resources  
 8 available to us, just as we had the legal  
 9 resources. So those things that we needed to  
 10 execute and ensure the licensing agreements in the  
 11 software products we used, as we agreed upon, we  
 12 sometimes referred to those -- those resources.  
 13 Q. If you could, look at paragraph 14 on the  
 14 same page. The first clause says, "As my staff and  
 15 I communicated to our licensees," and then it  
 16 continues on.  
 17 Can you identify -- strike that. Let me  
 18 ask this differently.  
 19 That's -- that first sentence in paragraph  
 20 14 refers to a provision; correct?  
 21 A. It refers to a provision in paragraph 13.  
 22 Q. Section 2.01 --  
 23 A. Yes.  
 24 Q. -- of the standard agreement?  
 25 A. Yes.

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1 Q. And paragraph 14 says -- and I'm  
 2 paraphrasing. Please, tell me if I've in any way  
 3 mischaracterized what paragraph 14 describes, but  
 4 it says that you and your staff communicated to  
 5 AT&T's licensees that section 2.01 was only  
 6 intended to ensure that if a licensee were to  
 7 create a modification or derivative work, any  
 8 portion of the original UNIX System V source code  
 9 that was included in the modification or derivative  
 10 work would remain subject to the confidentiality  
 11 and other restrictions of the software agreement.  
 12 Is that what was being conveyed in paragraph 14?  
 13 MR. MARRIOTT: Objection as to -- as to  
 14 form.  
 15 THE WITNESS: Yes, it is.  
 16 BY MR. GANT:  
 17 Q. Can you explain to me why it is that you  
 18 and your staff had to communicate with your  
 19 licensees about the supposed intent behind section  
 20 2.01 if the licensees actually had the language of  
 21 2.01 themselves?  
 22 MR. MARRIOTT: Objection as to form.  
 23 THE WITNESS: The -- our licensees wanted  
 24 to be sure that their interpretation of the clause  
 25 of the agreements was what they -- they understood

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1 it to be.  
 2 And so from time to time they would come  
 3 back and ask for a clarification on a particular  
 4 clause in the agreements, and -- to make sure that  
 5 their understanding and our understanding was  
 6 correct. And in this particular --  
 7 Q. Did -- I'm sorry.  
 8 A. In this particular clause most of -- many  
 9 of our licensees were concerned that we were not  
 10 trying to claim ownership in what they used, what  
 11 they deemed was their software.  
 12 In other words, they might have used our  
 13 software as a tool to develop or made a derivative  
 14 work that didn't rely on that product to be used to  
 15 help create that work.  
 16 So they were -- they wanted to make sure  
 17 they didn't violate the -- the agreement -- of  
 18 their understanding of the agreement. Make sure  
 19 they didn't violate the agreement, based on their  
 20 understanding of the clause. So they wanted to  
 21 clarify what the clause actually meant.  
 22 Q. Some of these requests from licensees came  
 23 after the agreements were already executed?  
 24 A. Some came after. Some came before. I  
 25 remember -- we talked earlier about the specimen

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1 agreements. It was common practice for us to send  
 2 out specimen agreements for licensees to review  
 3 before actually executing the -- the official  
 4 documents.  
 5 Q. There were many occasions on which AT&T  
 6 licensees after having executed a UNIX license with  
 7 AT&T were unsure about the meaning of some of the  
 8 provisions in that agreement and requested  
 9 clarification from AT&T; is that your testimony?  
 10 A. Yes. In those -- that normally occurred  
 11 as they moved closer to going to market or doing  
 12 something different than what they were doing when  
 13 they first signed the license.  
 14 And so as they moved into a different  
 15 area, they said, oh, let me go back and clarify, or  
 16 if they were getting ready to do a commercial  
 17 offering based on one of our software products,  
 18 they wanted to make sure that they had the rights  
 19 to do so.  
 20 Q. Did all UNIX licensees have a copy of the  
 21 agreement that they had entered into with AT&T?  
 22 MR. MARRIOTT: Objection as to form.  
 23 Lacks foundation, calls for speculation.  
 24 MR. GANT: Well, let me withdraw the  
 25 question.

1 BY MR. GANT:

2 Q. Was it AT&T's practice to provide all of  
3 its licensees with a copy of the UNIX license  
4 agreements entered into between AT&T and its  
5 licensees?

6 A. Yes. We actually -- it was kind of an  
7 elaborate procedure, but we actually -- are you  
8 familiar with the term, called glue backing? And  
9 we'd put the pages together, and we'd -- we'd seal  
10 them. We'd send out copies that they could keep.  
11 One was for informational purposes only. Two  
12 copies, two originals, for execution. They kept  
13 one, and we kept one.

14 Q. So when licensees came to you and others  
15 at AT&T with questions about the meaning of  
16 provisions in the UNIX license agreements, they in  
17 many instances had already signed such agreements  
18 and had copies of them at the time they asked for  
19 clarification about the meaning of provisions;  
20 correct?

21 MR. MARRIOTT: Objection as to form.

22 THE WITNESS: I would say it was about  
23 50/50, and -- and I'm kind of approximating, but we  
24 had -- we had as many questions before the  
25 agreements were executed as we did after.

1 specimen agreement or their executed agreement when  
2 they asked those questions.

3 BY MR. GANT:

4 Q. And notwithstanding that, the licensees  
5 sometimes still didn't know what the language  
6 meant; correct?

7 MR. MARRIOTT: Objection as to form.  
8 Lacks foundation, calls for speculation.

9 THE WITNESS: Again, I don't know whether  
10 they did not understand, but they wanted  
11 clarification to be specific to whatever their  
12 situation was that they were trying to deal with.

13 A lot of cases -- I think they understood,  
14 but they wanted to make sure that it was clarified,  
15 as to -- is that what we meant with regard --

16 BY MR. GANT:

17 Q. And they requested that clarification,  
18 because there was some uncertainty about what it  
19 meant; correct?

20 MR. MARRIOTT: Objection as to form.

21 THE WITNESS: I can't answer about what  
22 they thought.

23 BY MR. GANT:

24 Q. Well, I thought you've testified on many  
25 occasions today about what licensees thought or

1 The only -- the only time we had questions  
2 after was when the use evolved from what they  
3 intended when they first signed the agreements, and  
4 how they always don't know what those intentions  
5 are, but I could see the -- something came up  
6 different that they wanted to do with the software  
7 product than what they intended when they first  
8 licensed it.

9 BY MR. GANT:

10 Q. Based on your experience, many licensees  
11 looked at the plain language of the UNIX license  
12 agreements and still weren't sure what it meant?

13 MR. MARRIOTT: Objection as to form.

14 Lacks foundation, calls for speculation.

15 Q. Is that correct?

16 A. Again, I know they came in and asked for  
17 clarification.

18 Q. And they had the agreements in front of  
19 them; correct?

20 MR. MARRIOTT: Objection as to form.

21 THE WITNESS: They did.

22 MR. MARRIOTT: Lacks foundation, calls for  
23 speculation.

24 THE WITNESS: In most cases they had -- in  
25 fact, in all cases they either had a copy of a

1 intended?

2 MR. MARRIOTT: Objection to the form.

3 THE WITNESS: No. I said -- in other  
4 words, whatever they intended, they conveyed to us,  
5 but what they thought about that -- I mean all I  
6 know is what they told us, and that's what we acted  
7 on.

8 BY MR. GANT:

9 Q. I see. Can you look at the next -- I  
10 think it's the next sentence in paragraph 14, which  
11 is six lines down. It says, "As we understood  
12 section 2.01, any source code developed by or for a  
13 licensee and included in a modification or a  
14 derivative work would not constitute," open quotes,  
15 "resulting materials," closed quotes, "to be  
16 treated as part of the original software product,  
17 except for any material proprietary UNIX System V  
18 source code provided by AT&T or USL and included  
19 therein."

20 Mr. Wilson, could you show me the exact  
21 language in section 2.01 which supports your  
22 statement that I just read from your declaration?  
23 And, in particular, I'd ask you to show me where  
24 in -- I'm looking at your April -- Exhibit 76, tab  
25 five, which is the agreement between AT&T and

<p style="text-align: right;">Page 229</p> <p>1     Sequent.</p> <p>2         Can you show me where in that agreement</p> <p>3     the express language sets forth what you have</p> <p>4     stated in paragraph 14 of your April 2004</p> <p>5     declaration?</p> <p>6         A. Yeah. I believe that's what 2.01 states.</p> <p>7         Q. Can you show me exactly where in 2.01 you</p> <p>8     believe that is stated?</p> <p>9         A. Well, I think that's what -- that's the</p> <p>10    meaning of that clause. Now, we had a further</p> <p>11    clarification that we issued later that amended</p> <p>12    2.01.</p> <p>13         Q. That was an agreement signed by Sequent?</p> <p>14         A. It was in the -- the IBM agreement.</p> <p>15         Q. Okay. You understand that at the time of</p> <p>16    these agreements IBM and Sequent were separate</p> <p>17    companies; correct?</p> <p>18         A. Yes, but every -- any -- any modification</p> <p>19    or change that we made to the agreements were</p> <p>20    available to all of our licensees. And this</p> <p>21    particular clarification, this agreement with</p> <p>22    Sequent, was signed in '85 or April.</p> <p>23         And we further clarified that in both the</p> <p>24    April and August issues of \$ echo, as well as in</p> <p>25    side letters to other licensees. And so our policy</p>	<p style="text-align: right;">Page 231</p> <p>1         (PREVIOUS QUESTION THEN READ)</p> <p>2         THE WITNESS: Read my answer. I answered</p> <p>3     that question. I want you to read my answer.</p> <p>4         MR. GANT: Sure.</p> <p>5         (DISCUSSION OFF THE RECORD)</p> <p>6         MR. MARRIOTT: We're on the record.</p> <p>7         Just read the -- I think what he wants</p> <p>8     is -- and I don't want to speak for you. Just read</p> <p>9     his last question. I don't think you answered his</p> <p>10    last question.</p> <p>11         And if you have a different answer to his</p> <p>12    last question -- or if you have an answer to his</p> <p>13    last question, please, provide it, if you</p> <p>14    understand it. I object to it for the reasons I've</p> <p>15    stated.</p> <p>16         (DISCUSSION OFF THE RECORD)</p> <p>17         (REQUESTED PORTION OF THE RECORD READ)</p> <p>18         THE WITNESS: And my answer?</p> <p>19    BY MR. GANT:</p> <p>20         Q. Can you answer that question, please?</p> <p>21         A. I think I previously answered that</p> <p>22    question.</p> <p>23         Q. Then I didn't get it. So can you, please,</p> <p>24    answer it again?</p> <p>25         A. Okay. The --</p>
<p style="text-align: right;">Page 230</p> <p>1     was that any -- any language change provided to one</p> <p>2     licensees was available to all licensees. And a</p> <p>3     lot of times it was verbal conversation or --</p> <p>4         MR. GANT: I move to strike the answer as</p> <p>5     nonresponsive.</p> <p>6     BY MR. GANT:</p> <p>7         Q. Mr. Wilson, my -- I didn't ask about</p> <p>8     policies. I'm asking about written agreements. My</p> <p>9     question is: Was there any written amendment to</p> <p>10    the software agreement between AT&amp;T and Sequent,</p> <p>11    which is attached as tab five to your April 2004</p> <p>12    declaration?</p> <p>13         MR. MARRIOTT: Objection as to form. Is</p> <p>14    that -- I object to your arguing with the witness.</p> <p>15    I -- I object to the -- to the suggestion that that</p> <p>16    is a restatement of your previous question.</p> <p>17         MR. GANT: I didn't say -- I said it was</p> <p>18    my question.</p> <p>19         MR. MARRIOTT: To the extent that that</p> <p>20    was, you know, conveyed, I object to it, and I</p> <p>21    otherwise object to it in form.</p> <p>22         If you can answer his question, go ahead.</p> <p>23         THE WITNESS: I thought I answered it.</p> <p>24         MR. GANT: All right. Let's -- let's have</p> <p>25    it read back, and, if you could, try and respond.</p>	<p style="text-align: right;">Page 232</p> <p>1         MR. MARRIOTT: And I have the same</p> <p>2     objection, in case that's not clear.</p> <p>3         Go ahead.</p> <p>4         THE WITNESS: Several licensees raised the</p> <p>5     issue of clarification with 2.01, and we, in turn,</p> <p>6     issued a clarification of that language. The</p> <p>7     clarification did not change what was meant by</p> <p>8     2.01.</p> <p>9         It was just a clarification of what we --</p> <p>10    we intended by that language. That was made</p> <p>11    available to licensees, anyone who asked for it,</p> <p>12    but it was more widely made available by us going</p> <p>13    proactively to them through our \$ echo newsletter</p> <p>14    or telephone conversations or at seminars or what</p> <p>15    have you.</p> <p>16    BY MR. GANT:</p> <p>17         Q. Let me try it this way, Mr. Wilson. Did</p> <p>18    anyone from Sequent sign a written amendment to the</p> <p>19    software agreement attached as tab five to your</p> <p>20    April 2004 declaration? Yes or no?</p> <p>21         A. No.</p> <p>22         Q. Is it your testimony that a party can be</p> <p>23    bound to an amendment to a software agreement</p> <p>24    without having given written authorization to the</p> <p>25    amendment?</p>

1 MR. MARRIOTT: Let me just get my  
2 objection in to that. I object to that question on  
3 the grounds that it lacks foundation. It calls for  
4 speculation. It seeks a legal conclusion from a  
5 lay witness.  
6 You may answer the question, if you can.  
7 THE WITNESS: No.  
8 BY MR. GANT:  
9 Q. No, that's not your testimony, or, no, a  
10 document cannot be amended without having that  
11 amendment signed in writing?  
12 MR. MARRIOTT: Same objection.  
13 Q. I just want to make the record clear.  
14 A. Yeah, but I think you're asking me two  
15 questions. I mean I was answering your question.  
16 Q. All right. Tell me the question you  
17 thought you were answering, that you answered,  
18 "No," to? Let's do it that way.  
19 THE WITNESS: Read it back?  
20 MR. MARRIOTT: Same objection.  
21 (PREVIOUS QUESTION THEN READ)  
22 MR. MARRIOTT: I want to add an objection,  
23 which is that I think there's a -- I think that  
24 question is confusing, and -- and to the degree  
25 that it's meant to reflect prior testimony, and I'm

1 not suggesting it is, I think it misrepresents it,  
2 but go ahead.  
3 MR. GANT: I think the answer is clear,  
4 but I want to make sure.  
5 MR. MARRIOTT: You may.  
6 BY MR. GANT:  
7 Q. So, therefore, based on your --  
8 MR. MARRIOTT: Well, I'm sorry. Did --  
9 did we have a --  
10 MR. GANT: There's an answer. He said,  
11 "No."  
12 MR. MARRIOTT: Could -- I apologize, but I  
13 need -- I want back the question and the answer  
14 then, because I didn't hear your answer.  
15 (REQUESTED PORTION OF THE RECORD READ)  
16 BY MR. GANT:  
17 Q. I take it, based on that answer,  
18 Mr. Wilson, that Sequent was not bound by or a  
19 party to any side letter entered into by IBM and  
20 AT&T?  
21 MR. MARRIOTT: Objection as to form.  
22 Q. Am I correct about that?  
23 MR. MARRIOTT: Lacks foundation, calls for  
24 speculation. Whatever agreements there are speaks  
25 for themselves.

1 THE WITNESS: Sequent had agreements  
2 directly with AT&T. That's what they were --  
3 that's what they were bound by. Not by any other  
4 licensee.  
5 BY MR. GANT:  
6 Q. And any agreements between Sequent and  
7 AT&T were governed only by the express agreements  
8 assented to in writing by those parties; correct?  
9 MR. MARRIOTT: Objection as to form.  
10 Lacks foundation, calls for speculation, seeks a  
11 legal conclusion from a lay witness.  
12 THE WITNESS: That's correct.  
13 BY MR. GANT:  
14 Q. Going back to section -- strike that.  
15 Going back to tab five. I had asked you  
16 earlier to show me exactly where in that document  
17 was set forth the express language supporting your  
18 claim in the last sentence of paragraph 14 of your  
19 April 2004 declaration.  
20 All right. You mentioned 2.01 generally  
21 when I asked you that earlier. My question is:  
22 Can you direct me to any specific language within  
23 section 2.01, tab five, that supports your  
24 statement in the last sentence of paragraph 14?  
25 A. The last three lines. "Prepare derivative

1 works based on such software product" -- it's the  
2 last three lines of paragraph 2.01, under the  
3 section, "Grant of Rights."  
4 And it says, "and to prepare derivative  
5 works based on such software product, provided the  
6 resulting materials are treated hereunder as part  
7 of the original software product."  
8 Q. The last sentence of paragraph 14 of your  
9 April 2004 declaration uses the phrase, "except for  
10 any material proprietary UNIX System V source code  
11 provided by AT&T or USL."  
12 Where in section 2.01 does that language  
13 appear?  
14 MR. MARRIOTT: Where does the exact  
15 language of the paragraph 14 appear in 2.01; is  
16 that the question?  
17 MR. GANT: Your objection, to the extent  
18 that is one, is noted.  
19 BY MR. GANT:  
20 Q. Can you answer the question, please?  
21 A. Yeah. That was provided in a  
22 clarification that's not shown here in Exhibit 5  
23 (SIC), but that was an issue raised by -- by our  
24 licensees, which we clarified in subsequent  
25 publications, documentations and what have you.

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1 Q. It's your testimony that the meaning of  
 2 2.01 set forth in the last sentence of paragraph 14  
 3 of your April 2004 declaration is not apparent from  
 4 the express language of 2.01 --  
 5 MR. MARRIOTT: Objection as to form.  
 6 Mischaracterizes --  
 7 Q. -- as reflected in tab five; is that  
 8 correct?  
 9 MR. MARRIOTT: Let me just -- let me just  
 10 get my objection in.  
 11 Objection as to form. It misstates the  
 12 testimony, calls for speculation and lacks  
 13 foundation.  
 14 You may answer.  
 15 THE WITNESS: I'm sorry. You'll have to  
 16 read the question back again.  
 17 (DISCUSSION OFF THE RECORD)  
 18 (PREVIOUS QUESTION THEN READ)  
 19 MR. MARRIOTT: My objections are there.  
 20 THE WITNESS: Okay. It was -- it was  
 21 apparent to -- I say, us, or me, AT&T, when we put  
 22 the language together, that it did not mean -- it  
 23 meant exactly what was in the last line of  
 24 paragraph 16 on page seven.  
 25 MR. MARRIOTT: 14?

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1 BY MR. GANT:  
 2 Q. You've testified --  
 3 MR. MARRIOTT: 14? Are we just clear?  
 4 It's -- he's referring to 14.  
 5 THE WITNESS: Seven and 16. Yeah.  
 6 BY MR. GANT:  
 7 Q. All right. You testified that there was  
 8 some clarification needed?  
 9 A. Yes.  
 10 Q. Why was that?  
 11 A. It was at the request of our licensees as  
 12 to what our intent was with that particular  
 13 language.  
 14 Q. There was uncertainty about the meaning of  
 15 2.01?  
 16 A. Yes.  
 17 Q. And at least in the minds of the  
 18 licensees, they couldn't tell exactly what it meant  
 19 by looking at the language of 2.01; correct?  
 20 MR. MARRIOTT: Objection as to form.  
 21 THE WITNESS: I'm not sure about what --  
 22 again, what they thought, but the reason -- the  
 23 stated reasons that they came in, the software  
 24 agreements preceded any commercial offerings that  
 25 they were trying to put together.

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1 And so once that started to happen, and  
 2 they started developing things of value, they  
 3 wanted clarification that we did not exercise  
 4 ownership in that which they were creating. And we  
 5 clarified we did not, only to the extent it  
 6 included any part of the software products that we  
 7 gave them.  
 8 But there was a lot of conversation about  
 9 that, and it -- the conversation evolved from the  
 10 time the source -- source code agreement was  
 11 executed in some cases until such time as they were  
 12 getting ready to actually go to market or produce  
 13 something that they wanted distributed. Normally  
 14 the questions did not come up when someone was  
 15 using it for internal purposes.  
 16 BY MR. GANT:  
 17 Q. Going back to my question a few moments  
 18 ago. Can you point me to the express language in  
 19 section 2.01 of the document at tab five that  
 20 supports your statement about the meaning of 2.01  
 21 that appears in the last sentence of paragraph 14  
 22 of your April 2004 declaration?  
 23 MR. MARRIOTT: And to that question I  
 24 object on the grounds that I think it's harassing,  
 25 because he's answered the question three times.

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1 You may not like the answer, but he's answered it.  
 2 And it's been asked and answered, in light of my  
 3 additional objection, and also it calls for  
 4 speculation and lacks foundation.  
 5 If you have a different answer,  
 6 Mr. Olson -- Mr. Olson. Mr. Wilson, please, offer  
 7 it.  
 8 THE WITNESS: It's as I've previously  
 9 stated.  
 10 BY MR. GANT:  
 11 Q. You can't answer my question?  
 12 A. I already answered your question.  
 13 Q. Do you think that you've pointed me to  
 14 express language in section 2.01 that supports the  
 15 statement -- statement in paragraph 14? Yes or no?  
 16 MR. MARRIOTT: Same objections as before.  
 17 THE WITNESS: It's kind of hard for me to  
 18 separate the two, because I know what was intended  
 19 by the overall agreement, and I know what we meant  
 20 by the language. And so when I look at 2.01,  
 21 it's -- it's stating what I said in 16 of the  
 22 declaration.  
 23 MR. MARRIOTT: Just to clarify, is it --  
 24 is it 16 or 14?  
 25 MR. GANT: It's 14. It's 14.

1 MR. MARRIOTT: Because I think it's 14,  
2 and I wanted to just make sure we're --  
3 THE WITNESS: It's 14.  
4 MR. MARRIOTT: Paragraph 14. I think  
5 that's what you're referring to.  
6 THE WITNESS: Yeah. It's the bottom of  
7 paragraph 14, which goes into page seven. Right?  
8 MR. GANT: That's right.  
9 THE WITNESS: Uh-huh.  
10 So when I look at 2.01, that's what it's  
11 saying to me. And I -- I further clarified that  
12 with our licensees.  
13 BY MR. GANT:  
14 Q. You can't point me to the words? For  
15 instance --  
16 A. No. I can't point you to those exact  
17 words. That's correct.  
18 Q. So the phrase, for instance, material  
19 proprietary UNIX System V source code does not  
20 appear in section 2.01, does it?  
21 MR. MARRIOTT: Objection as to form.  
22 THE WITNESS: No. We don't see that.  
23 BY MR. GANT:  
24 Q. In fact, the term source code doesn't  
25 appear there, does it?

1 MR. MARRIOTT: Same objection.  
2 THE WITNESS: I think it appears, because  
3 of -- again, when I look at these agreements, I  
4 have to look at them in their whole, and software  
5 product is source code or other materials. In  
6 other words, it could mean different things for  
7 different products.  
8 When I see software product, I go back to  
9 the schedule of software or software products  
10 defined under the software agreement. And so  
11 software products, meaning source code, object code  
12 any documentation that was associated with that  
13 particular product.  
14 BY MR. GANT:  
15 Q. It was your understanding when you were at  
16 AT&T that the UNIX license agreements needed to be  
17 looked at as a whole to understand their meaning?  
18 A. Yes.  
19 Q. Could you take a look at paragraph 15 of  
20 your April 2004 declaration? Do you have that in  
21 front of you?  
22 A. Yes, I do.  
23 Q. Do you see in the first line you used the  
24 term, "control"?  
25 A. (WITNESS NODS HEAD UP AND DOWN)

1 Q. Can you direct me -- let's use, again, the  
2 document at tab five as an example. Can you point  
3 me to anyplace in the software agreement between  
4 AT&T and Sequent where the term control is used?  
5 MR. MARRIOTT: Do you want him to read the  
6 entire Sequent agreement or --  
7 MR. GANT: He's reviewed it several times.  
8 I presume he has some familiarity. He can tell me  
9 if he needs to review it.  
10 MR. MARRIOTT: Take whatever time you need  
11 to read the document, if you're going to be asked  
12 about a document and the contents -- its entire  
13 contents.  
14 MR. GANT: You're welcome to help him, if  
15 you think you know.  
16 MR. MARRIOTT: I'm not here to help. I'm  
17 just here to protect the witness.  
18 MR. GANT: Well, I invite you to show him  
19 anyplace where the word appears, for the sake of  
20 efficiency. The witness can take whatever time he  
21 needs.  
22 THE WITNESS: What I was doing was  
23 referring back to 7.06(b), where we provided for  
24 the -- again, the exact specific words, but, in  
25 other words, we -- we required our licensees to

1 adhere to the -- the entire agreement.  
2 And we realized that in the use of the  
3 software products there may be occasions where they  
4 exchange software products with other licensees.  
5 And our requirement with that -- that status of  
6 that license with the person they wish to exchange  
7 or talk to about the code had to be of equal scope,  
8 and that's -- that's in paragraph 7.06(b).  
9 BY MR. GANT:  
10 Q. Is it your testimony that when you use the  
11 term, "control," in paragraph 15, that you were --  
12 you had in mind section 7.06(b) of the standard  
13 software agreement?  
14 MR. MARRIOTT: Objection as to form.  
15 THE WITNESS: Yeah. That's why it's  
16 there. I mean, in other words, the -- we wanted to  
17 clarify to our licensees that the -- that they --  
18 in other words, where there was a UNIX system users  
19 group and there was education licenses. There were  
20 commercial licenses and administrative licenses.  
21 And part of this growth was that these  
22 licensees could talk to each other. And to the  
23 degree that it included specific reference to our  
24 software products, we required them to verify it,  
25 which was the control we -- we extended with regard

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1 to protection of the software products. I mean  
 2 that was --  
 3 BY MR. GANT:  
 4 Q. You acknowledge that you're using a term,  
 5 "control," in your declaration. Notwithstanding  
 6 that the term doesn't appear anywhere in the  
 7 standard software agreement; correct?  
 8 MR. MARRIOTT: Objection as to form.  
 9 THE WITNESS: That's correct, and I'm  
 10 trying to explain why it used that word, but, yes,  
 11 I agree with that.  
 12 BY MR. GANT:  
 13 Q. Later in that same paragraph, the last  
 14 sentence says, "Although, the UNIX System V source  
 15 code contained in a modification or derivative work  
 16 continued to be owned by AT&T or USL, the code  
 17 developed by or for the licensee remained the  
 18 property of the licensee, and could, therefore, be  
 19 used, exported, disclosed or transferred freely by  
 20 the licensee."  
 21 What did you mean by the phrase, "remains  
 22 the property of the licensee"?  
 23 A. The -- anything that was distributed under  
 24 the scheduled software product source code, object  
 25 code, materials, documentation remained the

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1 Are you done?  
 2 THE WITNESS: (NODS HEAD UP AND DOWN)  
 3 MR. MARRIOTT: I couldn't tell if you were  
 4 done. I apologize. Go ahead.  
 5 BY MR. GANT:  
 6 Q. How does one tell whether or not AT&T code  
 7 was contained in a product of a licensee?  
 8 MR. MARRIOTT: Objection as to form.  
 9 THE WITNESS: There's actually several  
 10 ways. I mean you could -- you look at the  
 11 functionality exhibited by a product and whether it  
 12 is similar to the one that you have in your  
 13 software product.  
 14 And it can go from there, all of the way  
 15 to the extent where you actually go in and do an  
 16 audit of the code itself. And on occasion we did  
 17 that, where we actually had a third party, not a  
 18 member of AT&T or the licensee --  
 19 They had an independent, third party  
 20 computer software expert to go in and look at their  
 21 code to make sure that it was -- did not contain  
 22 the software product or if it did contain the  
 23 software product.  
 24 BY MR. GANT:  
 25 Q. Who is that third party?

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1 property of -- of AT&T. And the code that they  
 2 developed, independent of that, belonged to the  
 3 licensee.  
 4 So we -- the definition was the software  
 5 product and all of it associated with that  
 6 particular product was AT&T's. Anything that they  
 7 developed belonged to the licensee.  
 8 MR. GANT: Could you read it back, please.  
 9 (PREVIOUS ANSWER THEN READ)  
 10 BY MR. GANT:  
 11 Q. In your previous answer what did you mean  
 12 by developed independent -- or independently?  
 13 A. I probably misspoke. Not independently.  
 14 In other words, if it didn't contain any of our  
 15 code, it was their -- their work, and not ours. We  
 16 didn't exercise any assertion of rights to the code  
 17 that was not contained in the software product.  
 18 Q. What do you mean, "contained in the  
 19 software product"?  
 20 A. In that each software product had a  
 21 schedule defining it, a distribution that came with  
 22 that particular software product, and it included  
 23 source code, object code, documentation.  
 24 Q. Well, how does one tell --  
 25 MR. MARRIOTT: Are you done? I'm sorry.

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1 A. Usually it was someone associated with the  
 2 academic community that was not commercially  
 3 involved with any type of a development.  
 4 Q. And why were experts hired to assess  
 5 whether or not improper code was contained in a  
 6 licensee's product?  
 7 MR. MARRIOTT: Objection as to form.  
 8 Misstates the testimony, lacks foundation.  
 9 THE WITNESS: It was part and parcel -- or  
 10 part and parcel was protecting the software  
 11 products under the trade secret agreement. And in  
 12 some cases we had to actually go in and verify.  
 13 Some cases we just asked.  
 14 But we had to have due diligence in making  
 15 sure that the code deemed for this software product  
 16 was, in fact, that, or if it was something else, it  
 17 was, in fact, that.  
 18 Q. Did you find instances where there were  
 19 problems with what a licensee had done?  
 20 MR. MARRIOTT: Objection as to form.  
 21 Vague.  
 22 THE WITNESS: Yes, we did, because -- and  
 23 I don't -- I can't recall a specific instance  
 24 without going back and digging through some stuff,  
 25 but I know there were cases where we actually used



1 independent third parties to look at code.  
 2 There were cases when we -- we -- I, in  
 3 person, made calls to licensees based on the  
 4 functionality being exhibited in their product, to  
 5 see if they were properly licensed.  
 6 Because in some cases, you could look at  
 7 the product, and say, okay. This -- this seems to  
 8 be based on one of our software products, without  
 9 actually looking at all of the source code. And in  
 10 many cases that was enough to cause a declaration.  
 11 Oh, yes. And the licensee would --  
 12 Q. Was there a particular provision of the  
 13 licensing agreement that set out how this audit  
 14 would be conducted or that it would be conducted?  
 15 MR. MARRIOTT: Can I just hear the  
 16 question back.  
 17 (PREVIOUS QUESTION THEN READ)  
 18 MR. GANT: I think it was process, not  
 19 product, but --  
 20 THE WITNESS: The exact process that we  
 21 would use for any given situation was usually  
 22 negotiated with the licensee to make sure we were  
 23 respective of their concerns, as well as ours. And  
 24 so we tried to do it in a way that was not  
 25 objectional to the licensee, if they didn't have

1 anything to hide.  
 2 BY MR. GANT:  
 3 Q. Was that part of a standard software  
 4 agreement between AT&T and licensees?  
 5 A. It talks about the breach, and how --  
 6 giving the licensee a period of time to rectify  
 7 anything that we consider a breach of agreement,  
 8 and so that is defined in the software agreement.  
 9 Q. Was it important to AT&T that it have the  
 10 right to conduct these audits?  
 11 MR. MARRIOTT: Objection as to form.  
 12 THE WITNESS: Yes, it was.  
 13 BY MR. GANT:  
 14 Q. Why is that?  
 15 A. Well, in order to assure the compliance  
 16 with the agreement itself.  
 17 Q. Including ensuring that the code hadn't  
 18 inappropriately been used by licensees?  
 19 MR. MARRIOTT: Same objection.  
 20 THE WITNESS: I was just reading back. I  
 21 think it's paragraph six, but -- yes.  
 22 MR. MARRIOTT: When you get a moment,  
 23 maybe --  
 24 MR. GANT: That's okay. Why don't we --  
 25 MR. MARRIOTT: We've been going for

1 awhile.  
 2 MR. GANT: Yeah. Why don't we take a  
 3 break, and I'll try and streamline during the  
 4 break.  
 5 MR. MARRIOTT: Okay.  
 6 THE VIDEOGRAPHER: One moment, please.  
 7 MR. MARRIOTT: I'm told -- I just asked  
 8 Jason to check. I'm told that you've used two and  
 9 a half hours. So -- just for your information..  
 10 MR. GANT: Okay.  
 11 THE VIDEOGRAPHER: One moment, please.  
 12 Going off the record. The time is  
 13 3:59 p.m.  
 14 (RECESS TAKEN AT 3:59 P.M. TO 4:16 P.M.)  
 15 THE VIDEOGRAPHER: Back on the record.  
 16 The time is 4:16 p.m.  
 17 Please, continue.  
 18 BY MR. GANT:  
 19 Q. All right. Mr. Wilson, could you direct  
 20 your attention to paragraph 16 on page seven of  
 21 your April 2004 declaration.  
 22 (MR. DAVIS THEN EXITED THE ROOM)  
 23 THE WITNESS: Yes.  
 24 BY MR. GANT:  
 25 Q. Do you see where you say, "I do not

1 believe that our licensees would have been  
 2 willing," and the sentence continues on?  
 3 A. Yes.  
 4 MR. MARRIOTT: I apologize. Where are we?  
 5 MR. GANT: Paragraph 16, page seven, the  
 6 first sentence.  
 7 BY MR. GANT:  
 8 Q. Am I correct that you qualified it in that  
 9 way, because you don't know for a fact whether or  
 10 not licensees would have reacted in a way you've  
 11 described?  
 12 MR. MARRIOTT: Objection as to form.  
 13 Vague, ambiguous.  
 14 Q. Let me ask it this way: Do you have  
 15 personal knowledge about how licensees -- strike  
 16 that.  
 17 Do you have personal knowledge about  
 18 whether licensees would have been willing to enter  
 19 into a software agreement if they understood  
 20 section 2.01 to grant AT&T or USL the right to own  
 21 or control source code developed by the licensee?  
 22 Do you have personal knowledge about that?  
 23 A. Yes, I do.  
 24 Q. You can speak on behalf of the licensees?  
 25 A. I can speak on behalf of -- on behalf --

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1 no. I cannot speak on behalf of the licensees, but  
 2 I can speak to what they related to me with regard  
 3 to the rights --  
 4 Q. Any -- any --  
 5 MR. MARRIOTT: Just -- I'm not sure he's  
 6 done with his answer. So I just want to make sure.  
 7 (MR. DAVIS THEN RE-ENTERED THE ROOM)  
 8 MR. MARRIOTT: If I'm wrong in  
 9 interrupting you, I apologize.  
 10 Are you done with your answer?  
 11 MR. GANT: I think you were, but you're  
 12 doing it in good faith. That's fine.  
 13 THE WITNESS: All I was saying is that  
 14 they -- I could talk about what they -- they  
 15 presented to us.  
 16 BY MR. GANT:  
 17 Q. But you would just be retransmitting what  
 18 they told you?  
 19 A. That's correct.  
 20 Q. You -- you don't have any personal  
 21 knowledge about what was actually in their heads?  
 22 A. In their minds?  
 23 Q. Right.  
 24 A. No.  
 25 Q. Can you go down to the fifth line of

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1 paragraph 16. It talks about -- actually, let's go  
 2 one line up and read the whole sentence. "I  
 3 understood that many of our licensees invested  
 4 substantial amounts of time, effort and creativity  
 5 in developing products based on UNIX System V."  
 6 When you use the phrase, "based on," there, what  
 7 are you describing?  
 8 A. I'm trying -- I'm talking about using the  
 9 software products. In this case specifically  
 10 UNIX VI and V, and there were others.  
 11 Q. It was your understanding that many  
 12 licensees used the software products of AT&T, as  
 13 defined in AT&T's license agreements, and in turn  
 14 created new products?  
 15 A. That's correct.  
 16 Q. The next line down. You use the word,  
 17 "appropriate." What do you mean by that? Is that  
 18 a word you would have used, or was that something  
 19 that the lawyers put there, and you just let go by?  
 20 MR. MARRIOTT: Objection as to form.  
 21 THE WITNESS: It was part of the  
 22 vernacular that we used. It goes by -- I don't  
 23 know where I first picked up the word, but we used  
 24 it.  
 25 BY MR. GANT:

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1 Q. At AT&T?  
 2 A. At AT&T. Yeah.  
 3 Q. In connection with what?  
 4 A. Our licensees and trying to convey what we  
 5 mean.  
 6 Q. Did it come up, because AT&T didn't want  
 7 licensees to appropriate AT&T's intellectual  
 8 property?  
 9 MR. MARRIOTT: Objection as to form. I  
 10 think it's vague, but go ahead.  
 11 THE WITNESS: No. I don't -- I just think  
 12 that was the -- that's the proper word for what  
 13 we're -- we're describing here. I don't think that  
 14 was --  
 15 BY MR. GANT:  
 16 Q. Well, that wasn't my question. Would you  
 17 like it --  
 18 A. You said that AT&T -- go ahead.  
 19 MR. GANT: Could you read my question  
 20 back, please.  
 21 (PREVIOUS QUESTION THEN READ)  
 22 THE WITNESS: No.  
 23 BY MR. GANT:  
 24 Q. Was AT&T giving away its intellectual  
 25 property while you worked there?

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1 MR. MARRIOTT: Objection as to form.  
 2 THE WITNESS: They were not.  
 3 BY MR. GANT:  
 4 Q. They were trying to protect it; correct?  
 5 A. That's correct.  
 6 Q. And they were trying to figure out how to  
 7 market it and make a profit; correct?  
 8 MR. MARRIOTT: Objection as to the form.  
 9 Vague.  
 10 THE WITNESS: At some point it evolved  
 11 into that. It was not the original intent.  
 12 BY MR. GANT:  
 13 Q. When did that evolution occur?  
 14 A. With the UNIX -- I guess with the UNIX  
 15 System V. Some of the predecessor stuff was always  
 16 licensed two or three versions older than the  
 17 current development within the laboratories.  
 18 And the reason we were able to do this was  
 19 that we were licensing software that a lot of folks  
 20 felt it was not leading edge, but that changed over  
 21 time as it became more and more popular.  
 22 Q. The objective of AT&T's UNIX licensing  
 23 program was to try and generate revenue and profit  
 24 for AT&T; correct?  
 25 A. Yes. That's what I'm saying. Yes. It

1 evolved into that. Initially it was not.  
 2 Q. Did anyone ask you or suggest to you that  
 3 you leave AT&T in 1990 or '91, around the time when  
 4 you left?  
 5 A. I don't believe so.  
 6 Q. Were you asked to leave?  
 7 A. No.  
 8 Q. Did you voluntarily resign?  
 9 A. Yes, I did.  
 10 Q. Did you get any kind of departure document  
 11 that -- or did you submit a resignation letter?  
 12 A. I actually retired. So there was not a  
 13 letter submitted. No.  
 14 Q. You're no longer authorized to speak on  
 15 behalf of AT&T, I assume; is that correct?  
 16 A. That's correct. Only to the extent, I  
 17 guess, we're doing here. Yes.  
 18 Q. Well, are you -- have you been authorized  
 19 by AT&T to speak on its behalf during your  
 20 deposition today?  
 21 A. No, I have not.  
 22 Q. Have you been authorized by AT&T to speak  
 23 on its behalf in -- in your declarations submitted  
 24 in this case?  
 25 A. No.

1 MR. MARRIOTT: Objection as to form.  
 2 Q. Have you requested authorization or  
 3 permission from AT&T to speak on behalf of AT&T in  
 4 connection with this case?  
 5 MR. MARRIOTT: Objection as to form.  
 6 THE WITNESS: I have not.  
 7 BY MR. GANT:  
 8 Q. I'm sorry. Again?  
 9 A. I have not.  
 10 Q. Did you understand when you were employed  
 11 by AT&T that you were an agent of the company?  
 12 MR. MARRIOTT: Objection as to form.  
 13 THE WITNESS: Yes, I did.  
 14 BY MR. GANT:  
 15 Q. And did you understand at the time that as  
 16 an agent of AT&T it was your responsibility to try  
 17 and protect and advance the best interests of AT&T?  
 18 A. Yes, I did.  
 19 Q. And did you always endeavor to do so?  
 20 A. Yes, I did.  
 21 Q. And was one of the ways that you did that  
 22 to try and obtain the most advantageous license  
 23 agreements for AT&T as possible?  
 24 MR. MARRIOTT: Objection as to form.  
 25 THE WITNESS: I'm not clear about what you

1 mean, "most advantageous." I was -- I wanted to  
 2 make sure that the -- our intent was to make sure  
 3 that the software or intellectual property was  
 4 protected.  
 5 BY MR. GANT:  
 6 Q. And was one of your objectives when  
 7 entering into license agreements with licensees to  
 8 make sure that the terms of the agreements were as  
 9 favorable as you could obtain through the  
 10 negotiation process?  
 11 MR. MARRIOTT: Objection as to form.  
 12 THE WITNESS: The way I'm understanding  
 13 your question, I don't believe so, because the --  
 14 the terms and conditions were pretty much set in a  
 15 boilerplate, and any negotiation was usually just  
 16 clarification to determine which software product  
 17 someone needed. So there wasn't a specific  
 18 negotiation with individual licensees that would be  
 19 any different than the boilerplate standard  
 20 agreement.  
 21 BY MR. GANT:  
 22 Q. Well, let's focus on the development of  
 23 this so-called boilerplate for a moment. Am I  
 24 correct that when that was developed by AT&T it was  
 25 done with the purpose of trying to get a license

1 agreement that was favorable to AT&T; correct?  
 2 MR. MARRIOTT: Objection as to form.  
 3 Vague, ambiguous.  
 4 THE WITNESS: Yeah. When it was  
 5 developed, it was -- the primary purpose was -- if  
 6 you mean by favorable, that it protected the  
 7 underlying intellectual property.  
 8 So what I said earlier. It evolved out of  
 9 the intellectual property licensing organization,  
 10 and the agreements were designed to protect the  
 11 underlying intellectual property, which was covered  
 12 by that agreement.  
 13 BY MR. GANT:  
 14 Q. Protect AT&T's intellectual property?  
 15 A. Yes. That's correct.  
 16 Q. And at the same time try and generate  
 17 revenue for AT&T; correct?  
 18 MR. MARRIOTT: Objection as to form.  
 19 THE WITNESS: Yes.  
 20 BY MR. GANT:  
 21 Q. Would AT&T have entered into license  
 22 agreements related to its UNIX intellectual  
 23 property that put it in a worse position than it  
 24 would have been in if there had been no agreement  
 25 at all?

<p style="text-align: right;">Page 261</p> <p>1 MR. MARRIOTT: Objection as to form.  2 Lacks foundation, calls for speculation.  3 THE WITNESS: Would you read it again?  4 (PREVIOUS QUESTION THEN READ)  5 THE WITNESS: No.  6 BY MR. GANT:  7 Q. Can you look at paragraph 18 of your April  8 2004 declaration? Can you just quickly read it to  9 yourself and let me know when you're finished,  10 please?  11 A. (THE WITNESS COMPLIED)  12 Okay.  13 Q. In the first sentence you refer to  14 antitrust issues. What do you mean by that?  15 A. I think we mentioned this morning, We  16 talked about the environment under which AT&amp;T and  17 its operating companies operated under, defined in  18 a 1956 consent decree, and then the breakup of the  19 Bell system in 1983.  20 In both of those areas our main focus was  21 communications. It was a communications business,  22 and not any other business. And so the -- we first  23 started by licensing software, and we were going to  24 Jersey and talking about it.  25 And this was not a business that at the</p>	<p style="text-align: right;">Page 263</p> <p>1 AT&amp;T's UNIX licenses; isn't that right?  2 A. That's correct.  3 Q. And what was the basis for your  4 understanding of that relationship?  5 A. Again, as I stated earlier, it was the  6 environment that we were operating in at the time,  7 and the events that preceded the 1983 break up, and  8 then the issues that were -- from a general term  9 and from reading management books about what  10 happened in 1956.  11 Q. Did you rely on AT&amp;T's lawyers to explain  12 that relationship to you?  13 A. No, I did not.  14 Q. So this is just your layperson's  15 understanding?  16 A. Yes.  17 Q. Can you take a look at paragraph 19. The  18 second line from the bottom. You use the phrase,  19 "fully owns." What do you mean by that? Is there  20 a distinction in your mind between ownership and  21 full ownership?  22 A. Just being emphatic that they -- they own,  23 I guess. So the adverb is maybe not -- maybe it's  24 not needed, but they --  25 Q. So there's no substantive significance to</p>
<p style="text-align: right;">Page 262</p> <p>1 time it originated that we wanted to be in, and it  2 was clear it was not something we had been in  3 traditionally.  4 This was software that was developed for  5 our -- at Bell Laboratories for our switching  6 systems and what have you. And so the original  7 licensing program for this brand -- this product  8 was a -- I guess a byproduct of other development.  9 Q. I take it that neither at the time, nor  10 now, you had any specialized knowledge about  11 antitrust issues; is that right?  12 A. No.  13 Q. It's not correct?  14 A. No. I did not have any specialized  15 knowledge about --  16 Q. Did you rely on AT&amp;T's lawyers to explain  17 antitrust principles to you and how they might have  18 related to UNIX work?  19 A. I would have. I don't remember asking  20 those specific questions, but I would have -- had  21 it come up, I would have definitely gone to the  22 AT&amp;T attorneys for that.  23 Q. Well, in paragraph 18 of your April 2004  24 declaration you describe a relationship between  25 antitrust considerations and your understanding of</p>	<p style="text-align: right;">Page 264</p> <p>1 the term, "fully," there; is that right?  2 A. As opposed to own?  3 Q. Right.  4 A. Right.  5 Q. Now, the first sentence after the block  6 quote there says, "I understand this language" --  7 MR. MARRIOTT: "Stood." Sorry.  8 MR. GANT: "Understood." Thank you.  9 BY MR. GANT:  10 Q. "I understood this language to mean that  11 IBM, not AT&amp;T or USL, would have the right to  12 control modifications and derivative works prepared  13 by or for IBM. IBM," parenthetically, "like all  14 licensees under the agreements," close parens,  15 "fully owns any modifications and/or derivative  16 works based on UNIX System V prepared by or for  17 IBM, and can freely use, copy, distribute or  18 disclose such modifications and derivative works,  19 provided that IBM does not copy, distribute or  20 disclose any material portions of the original UNIX  21 System V source code provided by AT&amp;T or USL."  22 Can you point me to the exact language in  23 section 2.01 that supports the statement that I  24 just read from paragraph 19 of your April 2004  25 declaration?</p>

1 A. I cannot.  
 2 Q. Because it doesn't say it expressly;  
 3 correct?  
 4 MR. MARRIOTT: Objection as to the form.  
 5 THE WITNESS: That's correct.  
 6 BY MR. GANT:  
 7 Q. The second sentence after the block quote,  
 8 where it says, "IBM, like all licensees under the  
 9 agreements." When you said, "all," were you  
 10 referring to even those licensees who only had  
 11 signed and executed the standard software agreement  
 12 with the original language from 2.01?  
 13 A. No. I was talking about all licensees.  
 14 Q. Okay.  
 15 A. With and without the clarification.  
 16 Q. Well, how is it that a provision that  
 17 appeared in the side letter could affect the rights  
 18 and obligations of a party who didn't enter into a  
 19 side letter agreement?  
 20 MR. MARRIOTT: Objection as to form. It's  
 21 argumentative, calls for speculation. Actually, I  
 22 withdraw the speculation. It's argumentative, and  
 23 it seeks a legal conclusion.  
 24 You can answer.  
 25 THE WITNESS: Yeah. The side letters were

1 not agreements. They were a clarification, and  
 2 they were executed -- signed by -- by AT&T or my --  
 3 by myself or -- or someone in my organization. In  
 4 other words, it's not an agreement between the two.  
 5 BY MR. GANT:  
 6 Q. Is it your testimony that side letters  
 7 weren't signed and executed by both parties?  
 8 MR. MARRIOTT: Objection as to form.  
 9 THE WITNESS: It depends on the content of  
 10 the particular side letter. And, I guess, I was  
 11 talking about clarifications, where we were just  
 12 restating some of the language that was already in  
 13 there. We provided those to the licensee.  
 14 BY MR. GANT:  
 15 Q. So there is more than one kind of side  
 16 letter? There are some that just clarify, and  
 17 there are some that change; is that your testimony?  
 18 A. Yes.  
 19 Q. And do some of those require signatures  
 20 and others not --  
 21 MR. MARRIOTT: Objection as to --  
 22 Q. -- from licensees?  
 23 MR. MARRIOTT: Objection as to form.  
 24 Lacks foundation.  
 25 THE WITNESS: Yes.

1 BY MR. GANT:  
 2 Q. Okay. And which ones require signatures  
 3 from licensees?  
 4 A. The one like in attachment four --  
 5 Exhibit 4 (SIC).  
 6 Q. Uh-huh.  
 7 A. It was a clarification that we provided to  
 8 IBM, which required them to execute that they  
 9 understood the content. And that was mainly from  
 10 the standpoint of what we had negotiated with them.  
 11 So it was executed by both parties.  
 12 Q. Let me make sure I'm understanding you.  
 13 The document at tab four to your April 2004  
 14 declaration is a side letter entered into by IBM  
 15 and AT&T; correct?  
 16 A. That's correct.  
 17 Q. And they are the only parties to that side  
 18 letter agreement; correct?  
 19 A. That's correct.  
 20 Q. And the rights and obligations set out in  
 21 that document relate to IBM and AT&T only; correct?  
 22 MR. MARRIOTT: Objection as to form.  
 23 Lacks foundation, calls for speculation, seeks a  
 24 legal conclusion from a lay witness.  
 25 THE WITNESS: Specific to this letter,

1 yes. It only pertains to IBM and AT&T.  
 2 BY MR. GANT:  
 3 Q. Now, what is your understanding, if any,  
 4 about why both IBM and AT&T signed the side letter  
 5 at tab four to your April 2004 declaration?  
 6 A. It shows that both parties agreed to the  
 7 content of that side letter.  
 8 Q. And it was important that both parties  
 9 acknowledged that?  
 10 MR. MARRIOTT: Objection as to form.  
 11 THE WITNESS: Yes.  
 12 BY MR. GANT:  
 13 Q. Now, let's look at the block quote in  
 14 paragraph 19. This is a quotation from the IBM  
 15 side letter at tab four; correct?  
 16 A. Yes.  
 17 Q. Now, in the second sentence after the  
 18 block quote in paragraph 19 you say that, "IBM,  
 19 like all licensees under the agreement, fully own  
 20 any modifications of" -- "and derivative works  
 21 based on UNIX System V prepared by or for IBM."  
 22 Is that statement based on the language of  
 23 section 2.01, as set out in the IBM side letter?  
 24 A. Yes, it is.  
 25 Q. Okay. Please explain to the jury how it

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1 is that language that appears in the side letter  
 2 entered into only by AT&T and IBM may have altered  
 3 the rights or obligations of licensees who weren't  
 4 a party to that side letter?  
 5 MR. MARRIOTT: Objection as to form.  
 6 Lacks foundation, argumentative, seeks a legal  
 7 conclusion from a lay witness.  
 8 If you can answer, Mr. Wilson, please, do.  
 9 THE WITNESS: You said speak to the jury?  
 10 BY MR. GANT:  
 11 Q. Well, you're on videotape. You understand  
 12 that? And do you understand that your testimony  
 13 may be played before the jury in this case?  
 14 A. Okay.  
 15 Q. So that --  
 16 A. I understand.  
 17 Q. That's what I was referring to.  
 18 A. Okay.  
 19 Q. Just --  
 20 MR. MARRIOTT: Explain to the jury. So  
 21 answer the question, if you can.  
 22 MR. GANT: That's -- that's how this case  
 23 should be resolved.  
 24 And I'd like Mr. Wilson to explain his  
 25 position to the jury. So why don't we read back my

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1 question, so that he can do his best. Thank you.  
 2 (PREVIOUS QUESTION THEN READ)  
 3 MR. MARRIOTT: Objection as to the form.  
 4 My objections -- I don't know if that's a new  
 5 question or what, but objection as to form.  
 6 Go ahead, if you can answer.  
 7 THE WITNESS: It was our policy that  
 8 any -- any clarification, modification or change to  
 9 the basic software agreement provided for one  
 10 licensee was available to all licensees. And once  
 11 we did that, we made sure that our -- our staff  
 12 conveyed that.  
 13 In some cases in the way of a side letter  
 14 to licensees that requested it or through a --  
 15 through publication or through telephone calls, but  
 16 our practice was that any negotiated change,  
 17 clarification to the software agreements was  
 18 available to all of our licensees, as well as  
 19 the -- the pricing structure and so -- what have  
 20 you. It was always available to everyone.  
 21 BY MR. GANT:  
 22 Q. Okay. You referred to this as a policy or  
 23 a practice; is that correct?  
 24 A. Yes.  
 25 Q. You acknowledge that -- strike that.

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1 AT&T through some policy or practice  
 2 couldn't unilaterally alter the rights or  
 3 obligations of a licensee, could it?  
 4 MR. MARRIOTT: Objection as to form.  
 5 Lacks foundation, calls for speculation, seeks a  
 6 legal conclusion from a lay witness.  
 7 If you can answer that question,  
 8 Mr. Wilson, go ahead.  
 9 THE WITNESS: Yeah. They could not -- no.  
 10 We could not unilaterally alter the rights granted  
 11 to our licensees. No. We could not do that.  
 12 BY MR. GANT:  
 13 Q. And you said that -- strike that.  
 14 Is it your testimony, Mr. Wilson, that the  
 15 side letter entered into by AT&T and IBM, which is  
 16 attached as tab four to your April 2004  
 17 declaration, had no effect on the rights or  
 18 obligations of either AT&T or IBM?  
 19 MR. MARRIOTT: Can I hear the question  
 20 again, please.  
 21 (PREVIOUS QUESTION THEN READ)  
 22 MR. MARRIOTT: Objection as to form.  
 23 Lacks foundation, calls for speculation, seeks a  
 24 legal conclusion from -- from a lay witness.  
 25 THE WITNESS: It did alter it.

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1 BY MR. GANT:  
 2 Q. It did alter the rights and obligations  
 3 of --  
 4 A. In some -- yeah. In some cases. In other  
 5 words, it -- because I -- I go back and look at the  
 6 letter. Some of the clarifications in there and  
 7 the extension to other countries was not in the  
 8 original document. And going by your earlier  
 9 question, in other words, it -- it had to be  
 10 acknowledged by both parties.  
 11 Q. The AT&T/IBM side letter was more than a  
 12 clarification; correct?  
 13 MR. MARRIOTT: Objection as to form.  
 14 THE WITNESS: Yes.  
 15 BY MR. GANT:  
 16 Q. Can you look at paragraph 20 of your  
 17 declaration? This is the April 2004 declaration.  
 18 A. (THE WITNESS COMPLIED)  
 19 Q. The fourth line down. You use the phrase,  
 20 "material portions." Do you see that at the end of  
 21 the fourth line?  
 22 A. On page nine?  
 23 Q. Yeah. That's right. Paragraph 20, four  
 24 lines down.  
 25 A. I don't see that word.

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1 Q. Do you see paragraph 20?

2 A. Yes.

3 Q. It begins, "Clarifications of the kind"?

4 A. The fourth --

5 Q. Down four lines. The line begins, "and

6 derivative works." Do you see that?

7 A. Yes.

8 Q. At the end of it you use the phrase,

9 "material portions"?

10 A. Uh-huh.

11 Q. Referring to original UNIX System V code?

12 A. Yes.

13 Q. What did you mean by the phrase,

14 "material" -- by the term, "material"?

15 A. We were not trying to -- some of our

16 licensees developed application software, and some

17 cases used the algorithms in the code that

18 supported those algorithms or an input or what they

19 called BIOS in the software for the -- for the

20 operating system to be compiled into their -- into

21 an application.

22 In those cases a lot of time it was an

23 insignificant amount of code that was actually

24 included in the application, as opposed to a major

25 turnover of some -- some -- some part of the

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1 operating system.

2 Q. I see. So --

3 A. The material -- the difference between the

4 material was something substantive, as opposed to a

5 few lines of code to be brought into the

6 compilation.

7 Q. "Something substantive." What do you mean

8 by that?

9 A. Something more than, as I said earlier,

10 maybe a sort algorithm or a BIOS process that was

11 used in the operating system that was more

12 efficient to include with their application, as

13 opposed to adding it to the application. They

14 would pull it in on -- on execution from the

15 operating system.

16 Q. Can you show me where in the side letter

17 there is express language setting forth the idea

18 that you have set forth in paragraph 20 of your

19 April 2004 declaration about an exception for a,

20 quote, unquote, "material portion of original UNIX

21 System V code"?

22 A. No.

23 Q. It's not in the side letter?

24 A. No.

25 MR. MARRIOTT: Objection as to form.

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1 Q. Can you turn to page ten of your April

2 2004 declaration, please?

3 A. (THE WITNESS COMPLIED)

4 Q. Before I direct you to anything specific

5 in the declaration, I have a general question for

6 you. Do you know whether AIX is a derivative work

7 or a modification of UNIX?

8 A. I personally don't know. I do not.

9 Q. Under the software agreements between AT&T

10 and IBM, was IBM supposed to make any kind of

11 payments to AT&T for the rights to use, in the

12 respect set out in their agreements, UNIX code and

13 software products as defined in the -- strike that.

14 Under the software agreements -- well,

15 strike that. Let's try again. Take three.

16 Under the UNIX license agreements entered

17 into by AT&T and IBM, was IBM obligated to make

18 some payments to AT&T?

19 A. Yes, they were.

20 Q. Were you involved in any way in tracking

21 or ensuring that payment was made by IBM?

22 A. Yes.

23 Q. And what was your involvement in that?

24 A. The -- they had to identify the use that

25 they were using the source code for, and our

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1 license provided for what was known as designate

2 CPUs, and they had to reveal those to us. And then

3 the subsequent payments were all -- were detailed

4 in the agreement, where they were to be sent.

5 Q. How often did IBM make royalty payments to

6 AT&T?

7 A. They were required quarterly.

8 Q. Did IBM send any kind of statements or

9 paperwork to AT&T in connection with the payment of

10 royalties to AT&T?

11 A. I was not involved in that aspect of it.

12 I'm -- I know they did, but I was not -- I don't

13 have any direct knowledge.

14 Q. Did you ever have occasion to see any kind

15 of documents relating to those payments?

16 A. Only with regard to the -- the payment

17 structure and the designates CPU for the source

18 code. As far as the sublicensing fees and things,

19 those came into our accounting area.

20 MR. GANT: Let's mark as Exhibit 79 -- why

21 don't I let you do it.

22 (DEPOSITION EXHIBIT NUMBER 79 WAS MARKED

23 FOR IDENTIFICATION)

24 BY MR. GANT:

25 Q. Do you have Exhibit 79 in front of you,

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1 sir?

2 A. Yes.

3 Q. Do you see that your name appears on here

4 under an attention line. "Attention: Mr. O.L.

5 Wilson, division manager"?

6 A. Yes.

7 Q. Is that you?

8 A. Yes.

9 Q. Would -- do you recognize Exhibit 79 as an

10 example of a document you would have received from

11 IBM related to the payment of royalties by IBM to

12 AT&T?

13 A. These documents went straight to

14 accounting. I don't remember -- I don't recall

15 actually seeing these particular reports.

16 Q. Even though they were directed to your

17 attention --

18 A. That's correct.

19 Q. -- they went straight to accounting?

20 A. Uh-huh.

21 Q. Is the address of AT&T on here correct?

22 Was that the address of AT&T at the time?

23 A. I'm sure it is. It would be in the --

24 MR. MARRIOTT: The only address I have is

25 a P.O. box. Is that what you're referring to?

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1 MR. GANT: Yes.

2 THE WITNESS: Yes. That's correct.

3 BY MR. GANT:

4 Q. That is the correct address for AT&T in

5 approximately June of 1987?

6 A. Yes. And I'll point out it shows that

7 the -- the payments went through our Charlotte

8 office, where we were residing in Greensboro.

9 Q. So the information on this document is

10 consistent with your understanding of how payments

11 were made by IBM to AT&T at the time?

12 A. Yes, it is.

13 Q. Do you have any reason to doubt that this

14 is an authentic version of a document that AT&T

15 received from IBM?

16 MR. MARRIOTT: Objection as to form.

17 THE WITNESS: No. I don't have any reason

18 to doubt it.

19 BY MR. GANT:

20 Q. And when I ask that, I'm excluding the

21 information at the very top and the very bottom.

22 The top is obviously a fax banner, where we got

23 this document transmitted. I assume you were

24 ignoring that when you answered my question?

25 A. That's correct.

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1 Q. And I assume you were also ignoring the

2 numbers, the -- labeled confidential on the bottom

3 and the number on the right, which relates to the

4 document production in this case?

5 A. Yeah.

6 Q. The very bottom right?

7 A. Yes.

8 Q. And, of course, the exhibit number as

9 well; right?

10 A. Yes, yes, yes.

11 Q. You referred earlier to the way in which

12 AT&T used the term made available to licensees

13 changes in the software agreements, even though

14 licensees may have not actually entered into

15 agreements. Do you remember describing that

16 earlier?

17 MR. MARRIOTT: Objection as to form.

18 THE WITNESS: Could you be more

19 specific -- yeah, I remember --

20 BY MR. GANT:

21 Q. Well, I just want to sort of orient you

22 to --

23 A. Okay.

24 Q. -- the discussion.

25 A. I'm oriented. Yes.

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1 Q. Okay. Great. Thanks.

2 Was it AT&T -- strike that.

3 Is it your testimony that AT&T kept making

4 modifications to its UNIX license agreement

5 language more favorable for licensees and was

6 extending to them the benefits of those changes?

7 MR. MARRIOTT: Objection as to form.

8 Lacks foundation, vague.

9 THE WITNESS: We were making sure that the

10 agreements reflected the needs of our licensees,

11 and, actually, they would be more favorable for

12 what they were trying to do with the -- with the

13 software products.

14 And bear in mind we had different

15 licensees for the same software product, who had

16 different pursuits with the software products. So,

17 I guess, everything from educational,

18 administrative, to all of the way to the government

19 and -- and commercial licensees. So they were

20 different. So some of the terms were favorable to

21 others. Others they didn't really matter.

22 BY MR. GANT:

23 Q. And its your testimony that AT&T was

24 willing to allow some licensees to in effect

25 benefit from agreements they didn't enter into



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1 without getting paid additional money by those  
 2 licensees?  
 3 MR. MARRIOTT: Objection as to form.  
 4 THE WITNESS: You mean by -- without the  
 5 licensees paying AT&T additional dollars?  
 6 BY MR. GANT:  
 7 Q. Correct.  
 8 A. That's correct.  
 9 Q. Was that a -- strike that.  
 10 If that's what occurred, was that  
 11 something that was in the best interest of AT&T, to  
 12 grant more rights to licensees without getting  
 13 anything in return?  
 14 MR. MARRIOTT: Objection as to form.  
 15 Calls for speculation, lacks foundation.  
 16 THE WITNESS: I'm trying to think of the  
 17 things that we -- we modified and changed. What  
 18 was a basis for the revenue was designated CPUs and  
 19 object code versions, which were sublicensed.  
 20 And, to the best of my recollection, any  
 21 of the changes we did might have extended the area  
 22 in which they could use the software or sublicense  
 23 the software, and with that was associated revenue  
 24 stream.  
 25 (DISCUSSION OFF THE RECORD)

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1 BY MR. GANT:  
 2 Q. Let's look at paragraph 25 of your  
 3 declaration, and we're in the April 2004  
 4 declaration now. Paragraph 25. There's a sentence  
 5 after the block quote, where it says, "As we  
 6 communicated at our seminars in our" -- "and in our  
 7 newsletters to UNIX System V licensees, this new  
 8 language was intended only to clarify the language  
 9 in the original section 2.01, not change its  
 10 meaning." Do you see that?  
 11 A. Yes, I do.  
 12 Q. Did any AT&T lawyer ever tell you that  
 13 this alteration in the language of section 2.01 did  
 14 not change its meaning?  
 15 MR. MARRIOTT: Just object here,  
 16 Mr. Wilson. My -- my advice to you, Mr. Wilson, is  
 17 not to reveal the advice you've been provided, if  
 18 any, by -- by your counsel, me, and I -- I -- my  
 19 recommendation would be to you to respect the  
 20 privilege of AT&T, but you'll make what choice you  
 21 wish to make.  
 22 MR. GANT: I respectfully suggest that  
 23 horse left the barn a long, long time ago.  
 24 MR. MARRIOTT: Well, that's an interesting  
 25 little catchy phrase, but I disagree with it,

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1 and -- and, unlike you, who has several times asked  
 2 questions that seem to suggest no particular care  
 3 for the privilege, I do wish to respect it.  
 4 So Mr. Wilson can make what decision he  
 5 wants, and perhaps he has nothing to say, but  
 6 that's -- that will be for him to decide.  
 7 But my advice to you would be to respect  
 8 the privilege and not to disclose legal advice that  
 9 you may have received from the lawyers of AT&T, but  
 10 you make the decision you wish to make, Mr. Wilson.  
 11 BY MR. GANT:  
 12 Q. Mr. Wilson, you understand that this case  
 13 involves litigation between my client and IBM? You  
 14 understand that?  
 15 A. Yes.  
 16 Q. And do you understand that the matters at  
 17 issue in the litigation are serious and important  
 18 to all parties?  
 19 A. Yes.  
 20 Q. And, I take it, that it has not escaped  
 21 you that IBM is attempting to use your testimony in  
 22 a way that is disadvantageous to my client, the  
 23 plaintiff in this case; do you understand that?  
 24 MR. MARRIOTT: Objection. That's --  
 25 that's argumentative. That's -- that's

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1 inappropriate, and I think you ought not to be  
 2 asking questions like that.  
 3 If you can answer the question, go ahead,  
 4 Mr. Wilson.  
 5 THE WITNESS: I never thought about it  
 6 that way. I mean I think the -- either side could  
 7 have contacted me, and they just -- in my opinion,  
 8 they just contacted me first. So I mean I would do  
 9 the same thing. I don't think my testimony would  
 10 change depending on who was deposing me.  
 11 BY MR. GANT:  
 12 Q. Well, let me ask you then right now. Are  
 13 you willing to meet with attorneys for SCO and to  
 14 sit down with us and talk about your experiences at  
 15 AT&T and the issues in this case, so that we can  
 16 get a better understanding of -- of what went on at  
 17 AT&T and what your involvement was? Are you willing  
 18 to do that, sir?  
 19 MR. MARRIOTT: As I advised you, Counsel,  
 20 at the beginning of the deposition, Mr. Wilson has  
 21 indicated to me that he wishes to be available for  
 22 a seven hour -- let me finish, Counsel. He wishes  
 23 to be available for seven hours of deposition.  
 24 My advice to Mr. Counsel -- to Mr. Wilson  
 25 is that that -- that be the time he makes himself

1 available, and I would -- you know, I think that's  
2 not an appropriate question.  
3 And I think, Mr. Wilson, that's a question  
4 you should answer after we've had an opportunity to  
5 consult and I let you know what your options are  
6 with respect to that.  
7 MR. GANT: Are you instructing him not to  
8 answer the question?  
9 MR. MARRIOTT: Did I say that, Counsel?  
10 MR. GANT: Well, you just advised him not  
11 to answer until you've had a chance to confer. So  
12 I'm trying to understand what you mean.  
13 MR. MARRIOTT: Well, if you'd let me  
14 finish -- do you want -- why don't we take a  
15 minute, and we'll confer.  
16 MR. DAVIS: Actually, the tape is almost  
17 over.  
18 MR. MARRIOTT: Well, that makes it better.  
19 MR. DAVIS: So you can take more than a  
20 minute.  
21 MR. MARRIOTT: So we'll take a minute and  
22 confer.  
23 MR. GANT: Okay.  
24 THE VIDEOGRAPHER: One moment.  
25 This marks the ends of tape number three

1 in the deposition of Otis Wilson. Going off the  
2 record. The time is 4:57 p.m.  
3 (RECESS TAKEN AT 4:57 P.M. TO 5:09 P.M.)  
4 THE VIDEOGRAPHER: Back on the record.  
5 Here marks the beginning of tape number four in the  
6 deposition of Otis Wilson. The time is 5:09 p.m.  
7 Please, continue.  
8 MR. MARRIOTT: Okay. We went off the  
9 record to consider two -- two issues. The first is  
10 the question of questioning concerning  
11 communications that Mr. Wilson may have had with  
12 lawyers at AT&T.  
13 I've instructed Mr. Wilson that he should  
14 not disclose the content of his communications  
15 with -- with the lawyers at AT&T, insofar as it  
16 would disclose their legal advice or -- or his  
17 request for legal advice of them.  
18 However, I think he can -- he may be able  
19 to answer your question, as it was framed, without  
20 raising issues. So you can try that, and we'll  
21 see, and maybe that just goes away.  
22 The second -- the second concern is you  
23 had asked whether or not Mr. Wilson will -- now  
24 having spent the day being deposed by you and by --  
25 by me, spend additional time talking to you.

1 Mr. Wilson has indicated to me, and you're  
2 free to ask him yourself, that he will take the  
3 request under advisement and get back to you  
4 through me, his counsel. So, with that said, I  
5 think you can proceed with your questions, and  
6 we'll see if we can --  
7 MR. GANT: Okay.  
8 MR. MARRIOTT: -- move this along.  
9 BY MR. GANT:  
10 Q. Let's just -- with respect to the second  
11 issue that you just mentioned, Mr. Wilson, has  
12 Mr. Marriott accurately reflected your position  
13 about whether or not you're willing to meet with  
14 counsel for SCO?  
15 A. Yes.  
16 Q. And you'll take it under advisement and  
17 let Mr. Marriott know, who will in turn let us  
18 know; correct?  
19 A. That's correct.  
20 Q. Okay. Let me try again, because I think  
21 my question does not implicate privilege issues.  
22 This is a question I asked you several minutes ago.  
23 Did any AT&T lawyer ever tell you that the  
24 alteration in the language of section 2.01, which  
25 is set forth in paragraph 25 of your April 2004

1 declaration, did not change the meaning of section  
2 2.01 as it was previously written?  
3 A. They did not.  
4 Q. Could you turn to page --  
5 MR. GANT: Actually, there was one other  
6 question pending, which was -- and I'd like it read  
7 back, since it was long, and I'll never remember  
8 it. And it was the question --  
9 MR. MARRIOTT: Well, we have to find it.  
10 THE WITNESS: Well, can you -- do you have  
11 a word search on there? It's the question about  
12 whether he understood -- Mr. Wilson understood  
13 that -- Counsel, I'm not trying to make it --  
14 MR. MARRIOTT: Why don't you just ask it  
15 again? We'll just --  
16 MR. GANT: All right. I'll try.  
17 MR. MARRIOTT: I don't even remember what  
18 you're talking about.  
19 MR. GANT: This was the question about  
20 Mr. Wilson's understanding with respect to the use  
21 of his declaration.  
22 MR. MARRIOTT: Oh, you mean -- why don't  
23 you just ask your question again. Hopefully in a  
24 little fairer light.  
25 THE WITNESS: I remember the question.

1 BY MR. GANT:  
 2 Q. You do?  
 3 A. Yeah. And I answered -- yes. You were  
 4 saying -- well, go ahead.  
 5 Q. Okay.  
 6 A. It's not my job.  
 7 MR. MARRIOTT: I'm not sure what -- that  
 8 we understand what the question is, and I think  
 9 you -- I don't know if he answered or not. So  
 10 just -- either go back and read it --  
 11 Q. Try and keep my question in mind, because  
 12 I expected a lengthy objection from Mr. Marriott.  
 13 My question is whether it was your understanding  
 14 before today's deposition that IBM intended to use  
 15 the declarations that you executed in this case in  
 16 a way that would disadvantage my client, The SCO  
 17 Group, in this litigation?  
 18 MR. MARRIOTT: Objection as to form.  
 19 THE WITNESS: No. That was not my  
 20 understanding.  
 21 BY MR. GANT:  
 22 Q. You had no understanding with respect to  
 23 that?  
 24 A. With respect to the entire sentence, I --  
 25 no, I did not. I -- I thought that the -- it could

1 be used as a document, you know, my declaration.  
 2 Q. You didn't know whether it would --  
 3 A. Advantage or disadvantage, no.  
 4 Q. Correct.  
 5 What is AIX?  
 6 A. I really don't know. I mean it's the  
 7 brand name used for a version of the operating  
 8 system of one of our licensees. In this case, IBM.  
 9 They call their operating version of the operating  
 10 system AIX.  
 11 Q. What is Dynix?  
 12 A. The same thing. It's a brand name for one  
 13 of the licensees in this case.  
 14 Q. What's your understanding of the  
 15 relationship between -- strike that.  
 16 What is your understanding, if any, of the  
 17 relationship between AIX and UNIX?  
 18 A. Most of our -- well, between --  
 19 specifically between AIX and UNIX -- in other  
 20 words, that was the -- the IBM flavor of the  
 21 operating system, known as UNIX System V.  
 22 Q. When you were with AT&T working on UNIX  
 23 licensing issues, isn't it the case that IBM would  
 24 sometimes communicate to you and describe AIX as a  
 25 derivative of UNIX?

1 A. I don't recall the exact conversation, but  
 2 that -- or when it actually occurred, but that's  
 3 the way it was communicated. Yes.  
 4 Q. That's the way it was communicated to you?  
 5 A. Uh-huh. AIX was their version of UNIX  
 6 System V.  
 7 Q. And that AIX was a derivative of UNIX or  
 8 derived from UNIX?  
 9 MR. MARRIOTT: Objection as to form.  
 10 THE WITNESS: Yes. It was based on that.  
 11 BY MR. GANT:  
 12 Q. Can you take a look at page 12 of our  
 13 April 2004 declaration? Do you have that, sir?  
 14 A. Yes. It's page 12. Uh-huh.  
 15 Q. Yes.  
 16 These paragraphs both refer to claims by  
 17 the plaintiff in this case; isn't that correct?  
 18 A. Yes.  
 19 Q. And Mr. Marriott asked you earlier today  
 20 about your understanding of the plaintiff's claims,  
 21 and I believe you testified that you've never read  
 22 the Complaint in this case; is that right?  
 23 A. That's correct.  
 24 Q. And that -- other than what you were told  
 25 by your counsel, who are also counsel for IBM, you

1 have no independent knowledge about any of the  
 2 specific allegations in this case; is that right?  
 3 A. That's correct. There was an article in  
 4 the newspaper one time, I believe, but that was  
 5 very general.  
 6 Q. So any views that you may have expressed  
 7 in the declaration that might be construed as an  
 8 opinion about the merits of this case are only  
 9 based on what you were told by counsel for IBM;  
 10 correct?  
 11 MR. MARRIOTT: Objection as to form.  
 12 Lacks foundation, misleading.  
 13 THE WITNESS: That's correct.  
 14 BY MR. GANT:  
 15 Q. Could you look at paragraph 29 on the  
 16 third line. Do you see the term, "exporting,"  
 17 there?  
 18 A. Uh-huh.  
 19 Q. Is it your understanding that the standard  
 20 software agreement placed some limitations on  
 21 exporting UNIX code?  
 22 A. Yes. It -- it was silent, but, yes, it  
 23 did. Correction. Yes. Yes, it did.  
 24 Q. And were there limitations on IBM's  
 25 ability -- strike that.

<p style="text-align: right;">Page 293</p> <p>1 Were there restrictions on IBM's right to 2 export UNIX code to other countries? 3 MR. MARRIOTT: Objection as to form. 4 THE WITNESS: Yeah. That's what I thought 5 you meant earlier, when you said exporting it out 6 of the country. Yes. The original licenses were 7 for use in the United States. 8 BY MR. GANT: 9 Q. Did the side letter grant IBM the right to 10 distribute certain material outside of the 11 United States? 12 A. Yes, it did. 13 Q. What document did that -- the side letter? 14 A. The side letter. 15 Q. Could you take a look at the side letter, 16 which is behind tab four. Do you see that? 17 A. Yes, I do. 18 Q. And am I correct that paragraph A.1 on the 19 first page of the side letter specified the 20 countries to which IBM could distribute certain 21 UNIX material; is that right? 22 MR. MARRIOTT: Objection as to the form. 23 As of that day, I assume, you're -- 24 MR. GANT: That's correct. 25 THE WITNESS: That's correct.</p>	<p style="text-align: right;">Page 295</p> <p>1 MR. MARRIOTT: Same objections. 2 THE WITNESS: Yes. 3 BY MR. GANT: 4 Q. Could you take a look at Exhibit 75, which 5 is your December 2003 declaration. In particular, 6 page six, paragraph 14. Do you see that? 7 A. Yes. 8 Q. Mr. Marriott asked you some questions 9 about this paragraph earlier today. He directed 10 you specifically to the term method and concepts on 11 the third line. Do you see that? 12 A. Yes. 13 Q. Do you know why your counsel, who are also 14 counsel for IBM, deleted this passage from your 15 declaration when they generated a new version of 16 it, which you ultimately executed in April of 2004? 17 MR. MARRIOTT: Objection to the form. I 18 think that's been asked and answered several times. 19 THE WITNESS: I do not. No, no. 20 BY MR. GANT: 21 Q. You don't know why? 22 A. Huh-huh. 23 Q. Can you turn to the next page, page seven, 24 paragraph 16. On the third line there, do you see 25 there's a reference to source code?</p>
<p style="text-align: right;">Page 294</p> <p>1 BY MR. GANT: 2 Q. Now, is India listed as one of those 3 countries? 4 A. I didn't realize what a poor copy -- I see 5 you're trying to read it too. I don't believe so. 6 Q. If there was no further amendment to the 7 agreement between AT&amp;T and IBM about distribution 8 of UNIX material outside of the United States, 9 would IBM have been permitted to distribute or 10 disseminate any UNIX material to India? 11 MR. MARRIOTT: Objection as to the form. 12 Lacks foundation, calls for speculation, seeks a 13 legal conclusion from a lay witness. 14 THE WITNESS: I would think not. In other 15 words, they were specifically restricted to the 16 United States, and then this amendment extended to 17 these countries specified here. 18 BY MR. GANT: 19 Q. That's what the side letter sets out? 20 MR. MARRIOTT: Objection as to the form. 21 THE WITNESS: Yes. 22 BY MR. GANT: 23 Q. And unless the side letter was amended or 24 superseded, that limitation would have remained in 25 place?</p>	<p style="text-align: right;">Page 296</p> <p>1 A. Yes. 2 Q. And do you recall when you testified 3 earlier today in response to a question from 4 Mr. Marriott that that actually should have said, 5 "software product," instead of, "software code;" do 6 you recall that? 7 MR. MARRIOTT: Objection as to -- can I 8 have the question back. 9 You may have misspoke. 10 MR. GANT: I don't think so. 11 MR. MARRIOTT: Maybe not. We'll find out. 12 Would you read the question back, please. 13 (PREVIOUS QUESTION THEN READ) 14 MR. GANT: I did misspeak. Let me 15 change -- let me try the question again. 16 BY MR. GANT: 17 Q. Do you recall testifying earlier today 18 that the third line of paragraph 16 of your 19 December 2003 declaration should have said, 20 "software product," rather than, "source code"? 21 A. Yes. 22 Q. Now, before you gave that testimony you 23 had previously testified that there was nothing you 24 would want to change in your declaration. Do you 25 recall that testimony?</p>

1 A. Yes, I do.  
 2 Q. I take it that your testimony was truthful  
 3 when you said that there was nothing else that you  
 4 would want to change in your declarations. Am I  
 5 right about that?  
 6 A. That's correct.  
 7 Q. And you simply missed something, and there  
 8 was an error in your declaration that you didn't  
 9 catch; is that correct?  
 10 A. That's correct.  
 11 Q. And it's the case, isn't it, that there  
 12 may be other errors in your declarations that you  
 13 simply have not yet caught; am I correct about  
 14 that?  
 15 MR. MARRIOTT: Objection as to form. It  
 16 calls for speculation.  
 17 THE WITNESS: Yes, there could be.  
 18 BY MR. GANT:  
 19 Q. Could you turn to page 13 of your December  
 20 declaration, please?  
 21 MR. MARRIOTT: I'm sorry. Could you say "  
 22 that again? Page --  
 23 MR. GANT: 13, of the December  
 24 declaration.  
 25 BY MR. GANT:

1 Q. There are references to paragraphs on this  
 2 page -- actually, let me back up.  
 3 The end of paragraph 32 -- rather, it's  
 4 the end of paragraph 31, which appears at the top  
 5 of page 13, refers in a few places to trade  
 6 secrets. Do you see that?  
 7 A. Yes.  
 8 Q. What do you mean by the term trade secret?  
 9 A. We treated this intellectual property, in  
 10 which is source code, and the associated materials  
 11 with the software product, as a trade secret under  
 12 the covenants of the trade secret law. That's how  
 13 we used to protect it, as opposed to copyright or  
 14 patent.  
 15 Q. While you were at AT&T, AT&T considered  
 16 its UNIX material as covered by trade secret law?  
 17 MR. MARRIOTT: Objection as to form.  
 18 THE WITNESS: Yes. Most of it was covered  
 19 by trade secret. There were some things that were  
 20 copyrighted. There were some subsets of the code  
 21 that was actually covered by a patent. And I can't  
 22 recall exactly what, but I do know we had some  
 23 specific sub -- subsets of the code that was  
 24 covered by a patent.  
 25 BY MR. GANT:

1 Q. It would be the attorneys at AT&T who  
 2 would be in the best position to provide  
 3 information about what UNIX intellectual property  
 4 was covered by trade secrets, which of it was  
 5 covered by copyright and which of it was covered by  
 6 patent?  
 7 MR. MARRIOTT: Objection as to form.  
 8 Lacks foundation, calls for speculation.  
 9 THE WITNESS: It would probably be someone  
 10 in our licensing group or in our development group,  
 11 who had the patent issue, who copyrighted the  
 12 order.  
 13 MR. MARRIOTT: Let me just interject,  
 14 Counsel. I recognize you have a different view,  
 15 but by my count your -- your allotted time is -- is  
 16 up. So in order to, I think, at least respect the  
 17 spirit of our agreement, which is that we would  
 18 each undertake to take three and a half, I'd just  
 19 urge you to try to -- try to wrap it up, so that I  
 20 can ask whatever follow-up I have.  
 21 MR. GANT: I will do my best, and I  
 22 certainly won't take the position that you can't  
 23 complete your redirect. So I'll do my best to move  
 24 along.  
 25 BY MR. GANT:

1 Q. Your declaration refers to GPL, General  
 2 Public License; isn't that right?  
 3 A. Yes.  
 4 Q. How familiar are you with the GPL?  
 5 A. Not very. I just read through it. It's  
 6 not very lengthy.  
 7 Q. Had you ever read through the GPL before  
 8 you met with counsel for IBM?  
 9 A. No.  
 10 Q. So they brought it to your attention?  
 11 A. That specific agreement, they did. Yes.  
 12 Q. And did counsel for IBM ask you to cover  
 13 in your declaration statements about the GPL?  
 14 A. No.  
 15 Q. How did it end up in your December  
 16 declaration?  
 17 A. We talked about that during the meeting  
 18 that we had here in Greensboro, the second -- the  
 19 first -- after the telephone call, the first  
 20 meeting in Greensboro.  
 21 Q. What -- what was discussed with respect to  
 22 the GPL?  
 23 A. As an example of a public, free software  
 24 type agreement.  
 25 Q. In paragraph 32 you refer to possible ways

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1 in which UNIX source code may have become available  
 2 to the general public; is that right?  
 3 A. Yes.  
 4 Q. Am I correct that the six items listed in  
 5 paragraph 32 are examples of possible ways; is that  
 6 correct?  
 7 A. That's correct.  
 8 Q. And you don't have personal knowledge  
 9 about whether any of these things have actually  
 10 occurred, do you?  
 11 MR. MARRIOTT: Objection as to form.  
 12 THE WITNESS: No. I don't have any  
 13 personal knowledge of any of this. Let me -- I  
 14 don't have any direct knowledge, except what I  
 15 talked about earlier, with AT&T Capital -- AT&T  
 16 Corp., what they did.  
 17 BY MR. GANT:  
 18 Q. No personal knowledge?  
 19 A. Huh-huh.  
 20 MR. MARRIOTT: Except with the exception  
 21 that he provided.  
 22 MR. GANT: Well, he earlier testified that  
 23 that wasn't personal knowledge either. If you have  
 24 an objection, just state it.  
 25 MR. MARRIOTT: Well, if you'd just quit

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1 misrepresenting the testimony, I wouldn't have any  
 2 objections. So --  
 3 MR. GANT: Well, if you believe that  
 4 misrepresented the testimony --  
 5 MR. MARRIOTT: I do.  
 6 MR. GANT: -- then just say,  
 7 mischaracterizes the testimony.  
 8 MR. MARRIOTT: I appreciate your legal  
 9 advice, as to how I should defend him, but I object  
 10 to the testimony, because I think it misstates --  
 11 the question, rather, because I think it misstates  
 12 the testimony. Go ahead.  
 13 MR. GANT: Now, let's read it back, and  
 14 then the witness can answer the question, please.  
 15 (PREVIOUS QUESTION THEN READ)  
 16 (DISCUSSION OFF THE RECORD)  
 17 (REQUESTED PORTION OF THE RECORD READ)  
 18 MR. GANT: And then the next question and  
 19 answer.  
 20 (REQUESTED PORTION OF THE RECORD READ)  
 21 BY MR. GANT:  
 22 Q. I believe the question was answered. So  
 23 I'm just going to move on, unless Mr. Wilson feels  
 24 like he needs to elaborate.  
 25 A. I do not.

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1 Q. If you could, look at paragraph three --  
 2 excuse me 33, on page 13, of your December  
 3 declaration. That carries over to page 14. If you  
 4 could, flip the page for me. Three lines down, you  
 5 say, "Based solely on the breadth of its  
 6 distribution I believe it is unlikely that there  
 7 are many, if any, parts of the UNIX System V source  
 8 code that could be said still to be confidential."  
 9 Do you see that, sir?  
 10 A. Yes, I do.  
 11 Q. When you say, "unlikely," are you  
 12 qualifying it in that way, because you don't  
 13 actually have personal knowledge about whether or  
 14 not many, if any, parts of the UNIX System V source  
 15 code could still be said to be confidential?  
 16 A. That's correct.  
 17 Q. Could you turn to page 15, paragraph 37?  
 18 A. (THE WITNESS COMPLIED)  
 19 Q. Do you remember Mr. Marriott asked you  
 20 some questions about the Lions' book?  
 21 A. Yes, I do.  
 22 Q. And I believe you testified, and, please,  
 23 correct me if I'm misspeaking, but you said that  
 24 you were familiar with the book; do you recall  
 25 that?

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1 A. Yes, I do.  
 2 Q. Can you explain what you mean, you're  
 3 familiar with the book?  
 4 A. The -- the book was actually provided  
 5 early on out of my organization in Greensboro to  
 6 our licensees under an agreement.  
 7 Q. Have you ever read the book in its  
 8 entirety?  
 9 A. I have not.  
 10 Q. When's the last time you looked at the  
 11 book in any way?  
 12 A. At least 20 years ago.  
 13 Q. Do you have any personal knowledge about  
 14 whether or not the Lions' book has been published  
 15 with the permission of Santa Cruz, as stated in  
 16 your declaration?  
 17 A. No.  
 18 Q. Will you turn to the next page of your  
 19 declaration?  
 20 A. (THE WITNESS COMPLIED)  
 21 Q. Paragraph 38. The first sentence says, "I  
 22 understand that plaintiff has made certain UNIX  
 23 source code available for download without charge  
 24 on the internet." Do you see that, sir?  
 25 A. Yes, I do.

1 Q. Do you have any personal knowledge to  
2 support that statement?  
3 A. I do not.  
4 Q. And am I correct that with respect to the  
5 information set out in paragraph 39, you also lack  
6 personal knowledge about those issues?  
7 A. You are correct.  
8 Q. Could you look at page 17 of your December  
9 2003 declaration. That's paragraph 41. Five lines  
10 from the bottom, you refer to confidentiality  
11 restrictions. Do you see that, sir?  
12 A. Yes.  
13 Q. Could you look up at the top of that  
14 paragraph, in particular at the first sentence,  
15 where you -- you've quoted language about available  
16 without restriction to the general public. When  
17 you referred to confidentiality restrictions, were  
18 you referring back up to the language from the  
19 software agreements about availability without  
20 restriction to the general public?  
21 MR. MARRIOTT: Objection as to form.  
22 THE WITNESS: I'm -- I didn't understand  
23 the question. You said was I referring to the  
24 software agreements?  
25 BY MR. GANT:

1 Q. Well, let me -- that was a bad question.  
2 Let me withdraw it and start again.  
3 Paragraph 41 says, "In addition, a  
4 software product or any part of the software  
5 product is available without" -- "without  
6 restrictions to the general public if released,  
7 distributed or made available pursuant to an open  
8 source license, like the GPL." Do you see that?  
9 A. Uh-huh, yes.  
10 Q. Can you show me exactly where in a  
11 software agreement this language appears?  
12 A. I cannot.  
13 Q. It's not in the software agreements?  
14 A. No.  
15 Q. Later in the paragraph you say, "However,  
16 the intent was that if source code were distributed  
17 without confidentiality restrictions, it would no  
18 longer be subject to any confidentiality  
19 restrictions." Do you see that, sir?  
20 A. Yes, I do.  
21 Q. Can you point me to any express language  
22 in the software agreements which states this?  
23 MR. MARRIOTT: Those exact words?  
24 MR. GANT: (NODS HEAD UP AND DOWN)  
25 THE WITNESS: No.

1 MR. MARRIOTT: Don't get up and dance,  
2 Otis, just because you hear the piano.  
3 THE WITNESS: Oh.  
4 BY MR. GANT:  
5 Q. Could you turn to --  
6 THE WITNESS: It's time for tea.  
7 Q. -- paragraph 42. If you could, just take  
8 a quick look at that paragraph, and then I have a  
9 question for you, please?  
10 A. Okay.  
11 Q. The last clause of the last sentence of  
12 that paragraph says, "I believe that it is unlikely  
13 that a significant amount of UNIX System V code  
14 remains subject to confidentiality restrictions."  
15 That statement is not based on personal knowledge,  
16 is it?  
17 A. That's correct.  
18 Q. You're simply speculating there on that  
19 issue; is that right?  
20 THE COURT REPORTER: Your answer?  
21 THE WITNESS: I didn't answer yet.  
22 Yes.  
23 BY MR. GANT:  
24 Q. Could you look at paragraph 43 on that  
25 same page. The first sentence reads, "As discussed

1 above, when I headed the UNIX licensing group at  
2 AT&T and USL, our stated policy was to treat all of  
3 our licensees essentially the same." What do you  
4 mean by, "essentially"?  
5 A. I guess I meant exactly the same.  
6 Q. So the language here is imprecise?  
7 A. That's correct.  
8 Q. When you say it was, "our stated policy,"  
9 can you think of any written documents that set out  
10 this policy?  
11 A. No legal documents, other than our -- you  
12 know, our discussion with licensees and our  
13 statements at seminars. Those types of things.  
14 Q. When you wrote this statement in your  
15 declaration and attested to it under penalty of  
16 perjury, did you have any specific written  
17 documents in mind?  
18 A. I did not.  
19 Q. Can you state with certainty whether there  
20 ever were, in fact, any written documents setting  
21 out the policy you've described in the first  
22 sentence of paragraph 43?  
23 MR. MARRIOTT: Objection as to form.  
24 THE WITNESS: I don't recall.  
25 BY MR. GANT:

1 Q. You can't state with certainty?  
 2 A. I can't state with certainty that that was  
 3 written.  
 4 Q. From whom did you get your understanding  
 5 of this alleged policy?  
 6 MR. MARRIOTT: Objection as to form.  
 7 THE WITNESS: That was our policy. That's  
 8 what we practiced, and -- and that's what led to  
 9 this -- this most favorite customer clause in our  
 10 agreement, which was also conveyed to our licensees  
 11 verbally and through seminars and the newsletter.  
 12 MR. GANT: Move to strike as  
 13 nonresponsive.  
 14 BY MR. GANT:  
 15 Q. My question was: From -- from whom did  
 16 you gain your understanding about this so-called  
 17 policy?  
 18 MR. MARRIOTT: Objection as to form. The  
 19 question was asked and has been answered. If you  
 20 have a different answer, Mr. Wilson, give it.  
 21 THE WITNESS: I do not have a different  
 22 answer.  
 23 BY MR. GANT:  
 24 Q. Well, you haven't identified anyone.  
 25 Should I take that to mean that you don't remember

1 who, if anyone, told you that this was AT&T's  
 2 policy?  
 3 MR. MARRIOTT: Objection as to form.  
 4 Argumentative, mischaracterizes the prior  
 5 testimony.  
 6 THE WITNESS: That was the policy. I mean  
 7 that was -- that was the practice that we used in  
 8 developing our agreements, and it was -- that's  
 9 what was practiced; I mean that's the way it was.  
 10 I don't remember ever seeing a specific  
 11 document that said that, other than things like we  
 12 talked about, the most favorite clause -- the most  
 13 favorite customer cause that we put in there, or  
 14 our behavior was when someone would ask for a  
 15 modification or a change based on something another  
 16 licensee had.  
 17 But we would state that all of the time.  
 18 I don't know where it -- I don't believe anybody  
 19 really -- I can't point to an individual that told  
 20 me that, but that was just our -- that was our  
 21 practice.  
 22 BY MR. GANT:  
 23 Q. You can't point to anyone who told you  
 24 that?  
 25 A. No.

1 Q. You can't point to any written document  
 2 that set out that so-called policy described in the  
 3 first sentence of paragraph 43; correct?  
 4 A. No. I can only point to language that  
 5 implemented that policy, but not something that  
 6 stated the policy.  
 7 Q. Can you look after the block quote on  
 8 paragraph 43. You refer -- there's a block quote  
 9 from paragraph A.12 of the IBM side letter there;  
 10 correct?  
 11 A. Yes.  
 12 Q. And your declaration says that, "This  
 13 language meant that if any other licensee were  
 14 offered or obtained terms more favorable to the  
 15 licensee than those contained in the IBM-related  
 16 agreement, then IBM would have the advantage of  
 17 a" -- "of such more favorable terms, as they had  
 18 been set forth in the IBM-related agreements." Do  
 19 you see that?  
 20 A. Yes.  
 21 Q. Can you direct me to where exactly in  
 22 paragraph A.12 a statement appears that supports  
 23 your recollection about what this language meant?  
 24 A. I don't believe it's there, but I'll  
 25 stipulate for you. You've already looked at -- I

1 don't believe that's there in the side letter.  
 2 Q. Paragraph A.12 doesn't contain language  
 3 which supports your explanation about the meaning  
 4 of that language; is that correct?  
 5 MR. MARRIOTT: Objection as to form.  
 6 Take -- take whatever time you need to  
 7 look at paragraph A.12, Mr. Wilson.  
 8 Q. Well, the whole thing is contained right  
 9 there in paragraph 43; is that correct?  
 10 A. Yes.  
 11 MR. GANT: So let's read back my question,  
 12 and see if you can answer it.  
 13 THE WITNESS: I thought you were going  
 14 through the specific language. So this is what's  
 15 there in that side letter.  
 16 BY MR. GANT:  
 17 Q. Can you point to any specific language in  
 18 paragraph A.12 of the IBM side letter that supports  
 19 your understanding of the meaning of that language,  
 20 which is set forth in paragraph 43 of your December  
 21 declaration?  
 22 MR. MARRIOTT: I object to the question as  
 23 vague. He has pointed to the language, and it is  
 24 quoted in his declaration.  
 25 Q. Can you answer my question?



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1 A. I would say paragraph 12.  
 2 Q. Which words in particular support your  
 3 view that if any other licensee were offered or  
 4 obtained terms more favorable to the licensee than  
 5 those contained in the IBM-related agreements, that  
 6 IBM would have the advantage of such more favorable  
 7 terms? Where does it say that?  
 8 MR. MARRIOTT: Well, you've now asked two  
 9 different questions. Where does it say exactly  
 10 that, or where does he find the support for that?  
 11 So which of the questions you've asked?  
 12 Q. Why don't you take the first part of that  
 13 question, please.  
 14 A. It's not there, because -- it's not there.  
 15 Q. Can you look at the next sentence, which  
 16 says that, "Although, not all of our licensees had  
 17 a side letter or most-favored customer provision,  
 18 we interpreted our license agreements in light of  
 19 the collective body of UNIX license agreements."  
 20 Do you see that, sir?  
 21 A. Yes, I do.  
 22 Q. Is it your testimony that to understand  
 23 what any one UNIX licensing agreement meant, one  
 24 would have to look at not just that agreement, but  
 25 also all other UNIX license agreements?

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1 MR. MARRIOTT: Objection as to form.  
 2 Lacks foundation, calls for speculation, seeks a  
 3 legal conclusion from a lay witness.  
 4 THE WITNESS: On any given day you  
 5 wouldn't have to look at all of the licensing  
 6 agreements. You would look at the -- the software  
 7 agreement and any side letters that pertained to  
 8 that software agreement. So it's not looking at  
 9 all licensees. It's looking at the specific side  
 10 letters that pertain to it.  
 11 BY MR. GANT:  
 12 Q. All right. Let me rephrase it. So I make  
 13 sure I'm getting what you're saying. Is it your  
 14 testimony that to understand what any one UNIX  
 15 license agreement meant, one would have to look not  
 16 just at that agreement, but also at all side  
 17 letters executed by all UNIX licensees in order to  
 18 ascertain the meaning of the UNIX license  
 19 agreement?  
 20 MR. MARRIOTT: Same objections.  
 21 THE WITNESS: And only -- the only thing I  
 22 differ on that is that you could look at the  
 23 software agreement and side letters, and not all of  
 24 the side letters were executed by licensees,  
 25 because there would be -- there's one software

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1 agreement.  
 2 So no matter how many people executed, it  
 3 would still be the same. There might have been 15  
 4 side letters. Some licensees might have two or  
 5 three. Some might have all ten, but if you look at  
 6 those bodies, you'd have all of the -- you'd have  
 7 an understanding of all of the agreements.  
 8 BY MR. GANT:  
 9 Q. How many different side letters were there  
 10 while you were at AT&T?  
 11 A. I don't recall.  
 12 Q. How would you figure out which side  
 13 letters AT&T wanted to apply to a particular  
 14 license agreement under its policy or practice?  
 15 A. It was usually driven by the request from  
 16 the licensee usually for some particular  
 17 clarification that they needed with regard to the  
 18 software agreement or by knowledge they gained  
 19 by -- by talking to other licensees that, oh, we  
 20 have this, or, do you have that in your agreement,  
 21 that kind of thing, or seminars. The whole thing.  
 22 The whole nine yards.  
 23 Q. Would those requests sometimes come  
 24 orally, rather than in writing?  
 25 A. Yes.

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1 Q. So would one would need to know whether or  
 2 not there were oral requests from licensees in  
 3 order to understand the meaning of a particular  
 4 UNIX license agreement?  
 5 MR. MARRIOTT: Objection as to form.  
 6 Lacks foundation, calls for speculation, seeks a  
 7 legal conclusion from a lay witness.  
 8 THE WITNESS: No. I didn't mean to imply  
 9 that they were oral agreements. The requests for  
 10 clarification may have been oral, written or  
 11 because they talked to the licensees.  
 12 BY MR. GANT:  
 13 Q. So a given licensee -- let's call it  
 14 Licensee A -- might have orally requested  
 15 information or clarification about a particular  
 16 term; correct?  
 17 A. Right.  
 18 Q. And it's possible that there would be no  
 19 written record of that request; correct?  
 20 MR. MARRIOTT: Objection as to form. It  
 21 calls for speculation.  
 22 THE WITNESS: That's correct.  
 23 BY MR. GANT:  
 24 Q. If someone two years later wanted to  
 25 figure out the meaning of the license agreement

<p style="text-align: right;">Page 317</p> <p>1 between Licensee A and AT&amp;T, what would someone 2 look at?</p> <p>3 MR. MARRIOTT: Objection as to form.</p> <p>4 THE WITNESS: They would look at the 5 agreements.</p> <p>6 BY MR. GANT:</p> <p>7 Q. Which agreements?</p> <p>8 A. Between the licensee and AT&amp;T.</p> <p>9 Q. Only the ones actually signed and executed 10 by the parties or also other things?</p> <p>11 MR. MARRIOTT: Objection as to form.</p> <p>12 THE WITNESS: I don't know, but they 13 would -- but I'm saying that what would govern 14 would be the licensing agreements between the 15 licensee and AT&amp;T. That's what they would look at. 16 If someone wanted to look at it, a third party, are 17 you saying, or --</p> <p>18 BY MR. GANT:</p> <p>19 Q. No. I'm saying -- let's say there's a 20 software agreement between AT&amp;T and Licensee A. 21 Okay. And Licensee A subsequently calls up AT&amp;T 22 and asks for what you're describing as 23 clarifications about certain issues. Okay. Are 24 you still following me?</p> <p>25 A. (WITNESS NODS HEAD UP AND DOWN)</p>	<p style="text-align: right;">Page 319</p> <p>1 A. \$ echo was used -- well, it could have 2 been there -- maybe by our licensees. I'm not 3 speculating. I'm saying that the -- there was 4 information that sometimes folks would look at the 5 licensing.</p> <p>6 As I mentioned earlier, they would look at 7 the specimen agreement. They would look at that, 8 and then they might look at something such as a 9 seminar or things that were in the \$ echo, in 10 forming what their licensing policy or agreements 11 would do.</p> <p>12 Q. That's what the AT&amp;T personnel would do in 13 interpreting license agreements?</p> <p>14 MR. MARRIOTT: Objection as to form.</p> <p>15 THE WITNESS: No. That what our licensees 16 would do; not AT&amp;T.</p> <p>17 BY MR. GANT:</p> <p>18 Q. That would be appropriate for them to do?</p> <p>19 A. Yes.</p> <p>20 Q. Could you --</p> <p>21 MR. MARRIOTT: Back in time -- I'm sorry. 22 We've been going -- let's just take a break here. 23 Are you almost done?</p> <p>24 Q. Can you look at page 19, paragraph 46, of 25 your December declaration. This language was</p>
<p style="text-align: right;">Page 318</p> <p>1 Q. And two years later there's a question 2 about the meaning of the agreements between AT&amp;T 3 and Licensee A. What would someone look at -- what 4 documents would someone look at in order to figure 5 out the scope and nature of the agreement between 6 AT&amp;T and Licensee A?</p> <p>7 MR. MARRIOTT: Objection as to form. 8 Lacks foundation, calls for speculation, seeks a 9 legal conclusion from a lay witness.</p> <p>10 THE WITNESS: They would look at those -- 11 those executed agreements that were in place 12 between Licensee A and AT&amp;T. They would not have 13 the benefit of any phone calls. They would not --</p> <p>14 BY MR. GANT:</p> <p>15 Q. Would they look at anything else?</p> <p>16 MR. MARRIOTT: Objection as to form. Same 17 objections.</p> <p>18 THE WITNESS: You know, depending on their 19 knowledge of our licensing program, they would 20 probably look at \$ echo, that we talked earlier 21 about. Several publications of that to see what 22 interpretations meant.</p> <p>23 BY MR. GANT:</p> <p>24 Q. \$ echo was sometimes used in interpreting 25 UNIX license agreements?</p>	<p style="text-align: right;">Page 320</p> <p>1 removed from your declaration when it was revised 2 and you executed it in April of 2004; correct?</p> <p>3 A. They're kind of running together. I read 4 both of them now. Okay. Yes.</p> <p>5 Q. The second sentence of paragraph 46 says, 6 "In fact, section 7.10 is not about confidentiality 7 at all." What is your definition of the term 8 confidentiality, as you used it in that paragraph?</p> <p>9 A. The -- confidentiality is the -- the 10 protective language in the software agreement that 11 defines how licensees could use this sublicense -- 12 I mean -- excuse me. Could use the software 13 products.</p> <p>14 Q. Do those uses include the right to sell, 15 lease or otherwise transfer or dispose of a 16 software product?</p> <p>17 MR. MARRIOTT: Objection as to form.</p> <p>18 THE WITNESS: Only as provided in (b), 19 76(b), which was exchange between source code and 20 licensees of equal scope.</p> <p>21 MR. GANT: Could you read back the 22 question and the answer, please.</p> <p>23 (DISCUSSION OFF THE RECORD) 24 (REQUESTED PORTION OF THE RECORD READ) 25 THE WITNESS: "Of equal scope."</p>

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1 BY MR. GANT:  
 2 Q. Do you acknowledge that confidentiality  
 3 issues are implicated if someone has the right to  
 4 sell, lease, transfer or dispose of a software  
 5 product?  
 6 MR. MARRIOTT: Objection as to form.  
 7 Lacks foundation, calls for speculation, vague and  
 8 confusing.  
 9 THE WITNESS: I think it would be  
 10 interpreted that way. Yes.  
 11 BY MR. GANT:  
 12 Q. Can you take a look at the end of  
 13 paragraph 46. The last sentence says, "In fact,  
 14 since section 7.10 does not prohibit the licensee  
 15 from doing anything or require the licensee to do  
 16 anything, I do not think it is possible for a  
 17 licensee to breach section 7.10."  
 18 Do you see that, sir?  
 19 A. Yes.  
 20 Q. We've already covered that you're not an  
 21 attorney; correct?  
 22 A. (WITNESS NODS HEAD UP AND DOWN)  
 23 Q. Is it your view that whether or not  
 24 there's been a breach of a license agreement is  
 25 ultimately a legal question?

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1 MR. MARRIOTT: Objection as to form.  
 2 THE WITNESS: I'm not -- I'm not quite  
 3 sure how to answer that. From -- in other words,  
 4 if I would look -- or have some code examined  
 5 and -- which I thought was in breach, that would  
 6 be -- is that what you mean by --  
 7 BY MR. GANT:  
 8 Q. Let me --  
 9 A. In other words, the evidence of a breach  
 10 would -- I don't think would be a legal --  
 11 Q. Let me try it --  
 12 A. -- determination.  
 13 Q. I'm sorry. I didn't mean to cut you off.  
 14 Let me try a different way.  
 15 The last clause of paragraph 46 says, "I  
 16 do not think it is possible for a licensee to  
 17 breach section 7.10." You're expressing a  
 18 layperson's view; is that right?  
 19 A. Yes. That's correct.  
 20 Q. And you don't know as a matter of law  
 21 whether or not the statement you made is accurate?  
 22 A. As the statement -- well, that's correct.  
 23 MR. MARRIOTT: Are we going to be a lot  
 24 longer, because, if so, let's just take a break.  
 25 (DISCUSSION OFF THE RECORD)

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1 THE VIDEOGRAPHER: Going off the record.  
 2 The time is 5:55 p.m.  
 3 (RECESS TAKEN AT 5:55 P.M. TO 6:09 P.M.)  
 4 (DEPOSITION EXHIBIT NUMBERS 80, 81, 82, 83  
 5 AND 84 WERE MARKED FOR IDENTIFICATION)  
 6 THE VIDEOGRAPHER: Back on the record.  
 7 The time is 6:09 p.m.  
 8 Please, continue.  
 9 BY MR. GANT:  
 10 Q. Okay. I'm going to show you some  
 11 documents, Mr. Wilson, that -- we've premarked a  
 12 document as Number 80.  
 13 MR. MARRIOTT: Can I get copies of all of  
 14 these, please?  
 15 MR. GANT: Yes. I apologize for throwing.  
 16 MR. MARRIOTT: That's all right.  
 17 MR. GANT: Big table.  
 18 BY MR. GANT:  
 19 Q. I'll just identify the document for the  
 20 record while you take a look at it, Mr. Wilson.  
 21 I'll do that with the next several documents. So  
 22 it's -- you can ignore what I'm saying.  
 23 Mr. Marriott will keep me in line.  
 24 Exhibit 80 is a document, Bates number  
 25 SCO1017589 through 1017597. Have you had a chance

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1 to review Exhibit 80?  
 2 MR. MARRIOTT: Well, I mean --  
 3 Q. Briefly?  
 4 THE WITNESS: Seriously.  
 5 MR. MARRIOTT: If you're going to ask -- I  
 6 mean if you're going to ask anything substantive  
 7 about this, I want him to read the whole document,  
 8 or we're going to be -- unfortunately, you've  
 9 pulled this on us now, when you said you've got  
 10 five minutes left, and given him documents, which  
 11 are obviously going to take some time to review.  
 12 If you're just going to say, have you ever seen  
 13 this before, that's one thing, but if you really  
 14 want him to answer questions, he's obviously got to  
 15 read the document.  
 16 MR. GANT: You can decide for yourself  
 17 whether, Mr. Wilson --  
 18 MR. MARRIOTT: Well, do you think he  
 19 should answer questions without reading the  
 20 document, Counselor?  
 21 MR. GANT: Well, why don't you wait to  
 22 hear the questions?  
 23 MR. MARRIOTT: Well, I'm just asking you,  
 24 if you can tell me, and then we can perhaps  
 25 avoid --

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1 MR. GANT: It depends on what the question  
2 is.  
3 MR. MARRIOTT: Okay. Go ahead.  
4 BY MR. GANT:  
5 Q. Okay. My first question for you,  
6 Mr. Wilson, is: Do you recognize this document as  
7 a format of a document that was used by AT&T during  
8 your employment there?  
9 A. Yes.  
10 Q. Could you turn to the last page of  
11 Exhibit 80. Do you see a signature under AT&T  
12 Technologies there?  
13 A. Yes.  
14 Q. Do you recognize that signature?  
15 A. Yes, I do.  
16 Q. Whose is it?  
17 A. Dave Frasure.  
18 Q. And David Frasure signed this document on  
19 your behalf?  
20 A. Yes.  
21 Q. Do you have any reason to doubt the  
22 authenticity of this document?  
23 A. I haven't read it, and -- so I would have  
24 to read it.  
25 Q. Do you have any reason to doubt that this

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1 is a document that came out of AT&T's files?  
2 MR. MARRIOTT: Maybe I can -- without  
3 reading it, can you answer the question?  
4 THE WITNESS: I don't think so.  
5 BY MR. GANT:  
6 Q. What was --  
7 A. And the reason I'm saying that, that comes  
8 from our licensing operation. You have to read  
9 these things. I mean --  
10 Q. The first page of the document has an AT&T  
11 logo and address on the right; correct?  
12 A. (WITNESS NODS HEAD UP AND DOWN)  
13 Q. And on the left it has your name and a  
14 title. Do you see that?  
15 A. Yes.  
16 Q. Was that your title at that point in time,  
17 February 21, 1985?  
18 A. Yes, it is.  
19 Q. And is this the format of letterhead that  
20 you used during this period of time?  
21 A. Yes, it is.  
22 Q. Was Digital Equipment Corporation a  
23 licensee of AT&T's UNIX?  
24 A. Oh, boy. It's getting late. They were a  
25 licensee of software products under the software

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1 agreement. In other words, UNIX -- I'm going to  
2 guess, because it's getting late. UNIX is the  
3 brand name. So --  
4 Q. Well --  
5 I'm sorry. I didn't mean to cut you off.  
6 I'm just trying to see if I could ask a different  
7 question that may help.  
8 A. Yeah. Well, what helps is -- in other  
9 words, the -- the software agreement and UNIX  
10 System V -- System V was a particular product under  
11 the software agreement.  
12 And so just in the first paragraph it  
13 talks about the software agreement and the  
14 sublicensing agreement. And I don't know what  
15 products they had under that agreement, because DEC  
16 was one of our earlier licensees, and they go all  
17 of the way back prior.  
18 Q. Digital -- Digital Equipment Corporation  
19 was a licensee of some AT&T --  
20 A. Software.  
21 Q. -- UNIX licensed products; correct?  
22 A. Yes.  
23 Q. I'm going to show you a document premarked  
24 as Exhibit 81. Again, do you recognize the format  
25 of this document as one that you used during your

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1 tenure at AT&T during approximately 1987?  
2 A. Yes, I do.  
3 Q. Could you turn to the second page of  
4 Exhibit 81. Do you see a signature there under,  
5 "AT&T Information Systems"?  
6 A. Yes, I do.  
7 Q. Do you recognize the signature?  
8 A. Yeah. That's my signature.  
9 Q. Do you have any reason to doubt that this  
10 is an authentic copy of a letter sent by AT&T to  
11 Sequent in July 1987?  
12 A. I do not. Only as I stipulated earlier, I  
13 would -- I haven't had -- it looks like it is a  
14 document. So I don't have any reason to believe  
15 it's not, unless I read it.  
16 Q. I'm going to hand you what's been  
17 premarked as Exhibit 82. Let me just go back to  
18 81, for the record, and put in the Bates number.  
19 The Bates number of Exhibit 81 was SCO0983624  
20 through 625. And the Bates numbers of Exhibit 82  
21 are SCO1067675 through 1067677, a three-paged  
22 document.  
23 Again, Mr. Wilson, looking at Exhibit 82,  
24 is this the format that you used during your tenure  
25 at AT&T?

1 A. That's correct.  
 2 Q. And, if you could, turn to page three of  
 3 Exhibit 82. Do you recognize the signature under,  
 4 "AT&T Information Systems"?  
 5 A. Yes, I do.  
 6 Q. Is that your signature?  
 7 A. Yes, it is.  
 8 Q. Do you have any reason to doubt that  
 9 Exhibit 82 is an authentic copy of a document sent  
 10 by AT&T to IBM in June 1987?  
 11 A. I do not have, but I haven't read them.  
 12 So I'm --  
 13 Q. Right. Looking at the document, this  
 14 appears consistent with --  
 15 A. Yes, it does.  
 16 Q. I'm going to hand you what's been  
 17 premarked as Exhibit 83. While you take a quick  
 18 look at it, for the record, this document is Bates  
 19 number SCO1056901 through 1056908, an eight-paged  
 20 document.  
 21 Mr. Wilson, directing your attention to  
 22 the first page of Exhibit 83. Does your signature  
 23 appear on the document?  
 24 A. Yes, it does.  
 25 Q. Can you show or read -- describe into the

1 record where it appears?  
 2 A. It appears on the first page at the  
 3 bottom, dated --  
 4 Q. Above your name?  
 5 A. Above my name.  
 6 Q. Otis Wilson?  
 7 A. Dated August 14th, 1984.  
 8 Q. Do you recognize the format of this  
 9 document?  
 10 A. Yes, I do.  
 11 Q. What is it?  
 12 A. It's an educational software agreement  
 13 between AT&T Technologies and Toyota Technology --  
 14 Technological Institute in Japan.  
 15 Q. Is this one of the formats used by AT&T  
 16 for its license agreements during your tenure at  
 17 AT&T?  
 18 A. Yes, it is.  
 19 Q. And looking at the form of the document --  
 20 strike that.  
 21 Looking at the document, do you see  
 22 anything that gives you reason to doubt that this  
 23 is an authentic copy of a document from AT&T's  
 24 files?  
 25 A. No. As I stated, only because I haven't

1 read it. I mean it looks -- it appears to be.  
 2 Q. Was Toyota Technological Institute a  
 3 licensee of UNIX products during your tenure at  
 4 AT&T?  
 5 A. Based on this document, I would say, yes.  
 6 I don't recall that particular institute directly.  
 7 I don't have any recall at this time. This is 20  
 8 years ago.  
 9 Q. I'm going to hand you what's been  
 10 premarked as Exhibit 84. For the record, this  
 11 document is Bates numbered SCO10 -- excuse me.  
 12 SCO1104142 through 1104149, an eight-paged  
 13 document.  
 14 Directing your attention to the first page  
 15 of Exhibit 84. Do you recognize your signature?  
 16 A. Yes, I do.  
 17 Q. And was that your signature, which appears  
 18 above your typewritten initials and last name?  
 19 A. Yes, it is.  
 20 Q. Again, is this a format for a software  
 21 agreement that AT&T used during your tenure there?  
 22 A. Yes, it is.  
 23 Q. Do you have any reason to doubt that this  
 24 is an authentic copy of a software agreement  
 25 between AT&T and the University of Tasmania?

1 A. I do not.  
 2 (DISCUSSION OFF THE RECORD)  
 3 MR. GANT: I'd like to mark the next  
 4 document Exhibit 85.  
 5 (DEPOSITION EXHIBIT NUMBER 85 WAS MARKED  
 6 FOR IDENTIFICATION)  
 7 BY MR. GANT:  
 8 Q. For the record, this document is Bates  
 9 numbered SCO1014916 through 1014918, a three-paged  
 10 document. Could I direct your attention to the  
 11 second page of the document, Mr. Wilson?  
 12 A. Yes.  
 13 Q. Do you see your signature there under,  
 14 "AT&T Technologies"?  
 15 A. Yes, I do.  
 16 Q. And, again, is this document in the form  
 17 that was used by you during your tenure at AT&T?  
 18 A. Yes, it is.  
 19 Q. Do you have any reason to doubt that this  
 20 is an authentic copy of a letter from you to IBM in  
 21 May 1984?  
 22 A. No.  
 23 (DISCUSSION OFF THE RECORD)  
 24 MR. GANT: Pass the witness.  
 25 MR. MARRIOTT: Okay. Well, let's take a

1 break. Let me look at these documents and see what  
2 I -- if anything. I think I'll have a little bit,  
3 but not a terrible amount.  
4 (DISCUSSION OFF THE RECORD)  
5 THE VIDEOGRAPHER: Going off the record.  
6 The time is 6:22 p.m.  
7 (RECESS TAKEN AT 6:22 P.M. TO 6:41 P.M.)  
8 THE VIDEOGRAPHER: Back on the record.  
9 The time is 6:41 p.m..  
10 Please, continue.  
11 REDIRECT EXAMINATION  
12 BY MR. MARRIOTT:  
13 Q. Mr. Wilson, I -- I believe you were asked  
14 a question regarding the -- the meaning or  
15 definition of the term software product, and I'm  
16 not entirely sure that I -- that I correctly heard  
17 your answer, but did I understand you to say that  
18 as you understand the definition of the term  
19 software product it includes modifications and  
20 derivative works?  
21 MR. GANT: Objection. Vague.  
22 THE WITNESS: The software product does  
23 not include modifications of derivative works.  
24 BY MR. MARRIOTT:  
25 Q. All right. So the term software product,

1 as defined in the AT&T, UNIX licensing agreements,  
2 does not, as you understand it, include  
3 modifications and derivative works?  
4 MR. GANT: Objection. Vague and compound.  
5 THE WITNESS: That's correct.  
6 BY MR. MARRIOTT:  
7 Q. I believe you were asked a question about  
8 the meaning of the term control, generally and  
9 specifically, as used by you in paragraph 15 of  
10 your declaration.  
11 As you understand the AT&T, UNIX licensing  
12 agreements, did AT&T have any right to control any  
13 portion of a modification or derivative work of a  
14 software product that did not include a portion of  
15 software product?  
16 MR. GANT: Objection. Vague, foundation,  
17 compound.  
18 THE WITNESS: It did not.  
19 BY MR. MARRIOTT:  
20 Q. I believe you may have said you had heard  
21 said that AIX is a derivative of UNIX. Do you, in  
22 fact, know whether AIX is a derivative of UNIX?  
23 MR. GANT: Objection. Compound, leading.  
24 THE WITNESS: I do not have personal  
25 knowledge. No, I do not.

1 BY MR. MARRIOTT:  
2 Q. You, I believe, were asked questions about  
3 whether you have personal knowledge of certain  
4 sales by AT&T Capital Corporation of -- of  
5 hardware, including source code.  
6 And I believe your testimony was that you  
7 didn't have personal knowledge of the actual  
8 dispositions by AT&T Capital Corporation of those  
9 machines; is that right?  
10 MR. GANT: Objection. Vague, compound.  
11 MR. MARRIOTT: Well, let me withdraw the  
12 question.  
13 BY MR. MARRIOTT:  
14 Q. Did you, in fact, have discussions with  
15 individuals at AT&T while you were there, employed,  
16 Mr. Wilson, about the fact that AT&T Capital  
17 Corporation had disposed of hardware, including  
18 source code?  
19 MR. GANT: Objection. Foundation, vague,  
20 calls for speculation.  
21 THE WITNESS: Yes, I did.  
22 BY MR. MARRIOTT:  
23 Q. You were asked several questions about  
24 AT&T's policy with respect to paragraph 43 of -- of  
25 your declaration, dated December 11, 2003. Do you

1 recall that line of questions, sir?  
2 A. Yes, I do.  
3 Q. You were asked, I believe, specifically  
4 about whether you could recall any documents that  
5 reflected that policy. Do you recall that  
6 testimony, sir?  
7 A. Yes.  
8 Q. Do you have a view as to whether, for  
9 example, the \$ echo publications of AT&T reflected  
10 the company's policy as described in -- in  
11 paragraph 43?  
12 MR. GANT: Objection. Vague, foundation,  
13 calls for speculation.  
14 THE WITNESS: Yes. I believe they do.  
15 BY MR. MARRIOTT:  
16 Q. And what about the side letters issued by  
17 the company, do you believe they reflected the  
18 company policy as described in paragraph 43?  
19 MR. GANT: Same objections.  
20 THE WITNESS: Yes, I do.  
21 Q. And do you have any doubt, Mr. Wilson,  
22 about the fact that the policy, as described in  
23 paragraph 43, was, in fact, the policy as you knew  
24 it and understood it and implemented it while you  
25 were employed at AT&T?

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1 MR. GANT: Same objections.  
 2 THE WITNESS: No, I do not.  
 3 BY MR. MARRIOTT:  
 4 Q. You were asked whether it was possible  
 5 that there might be errors in -- more errors in  
 6 your declaration. Do you recall that line of  
 7 questions, Mr. Wilson?  
 8 A. Yes, I do.  
 9 Q. Are you aware of any -- did you --  
 10 withdrawn.  
 11 Did you carefully review both of your  
 12 declarations before you signed them?  
 13 A. Yes, I did.  
 14 Q. And have you reviewed them again in  
 15 anticipation of this deposition?  
 16 A. Yes, I have.  
 17 Q. And we've discussed them here today at  
 18 this deposition?  
 19 A. Yes, we have.  
 20 Q. As you sit here today, Mr. Wilson, other  
 21 than as you may have clarified or corrected during  
 22 the course of today's examination, do you believe  
 23 there are any errors in the declarations that you  
 24 signed and submitted in this matter?  
 25 A. I do not.

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1 MR. MARRIOTT: I pass.  
 2 MR. GANT: Let's just confer for a second.  
 3 MR. MARRIOTT: Okay.  
 4 MR. GANT: It should be quick.  
 5 MR. MARRIOTT: I hope I gave you the  
 6 opportunity -- and I should just say, I didn't --  
 7 Counsel --  
 8 MR. GANT: We're off the record.  
 9 MR. MARRIOTT: Well, actually, I wouldn't  
 10 mind saying this on the record.  
 11 MR. GANT: Okay.  
 12 MR. MARRIOTT: Go ahead. Never mind.  
 13 We're off the record. It's not worth it.  
 14 (DISCUSSION OFF THE RECORD)  
 15 THE VIDEOGRAPHER: Going off the record.  
 16 The time is 6:46 p.m.  
 17 (RECESS TAKEN AT 6:46 P.M. TO 7:04 P.M.)  
 18 (REQUESTED PORTION OF THE RECORD READ)  
 19 THE VIDEOGRAPHER: Back on the record.  
 20 The time is 7:04 p.m.  
 21 Please, continue.  
 22 RECROSS-EXAMINATION  
 23 BY MR. GANT:  
 24 Q. Okay. Mr. Wilson, we just came back from  
 25 a break. And before the break Mr. Marriott asked

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1 you some questions in response to questions I had  
 2 asked you. Do you recall that?  
 3 A. Yes, I do.  
 4 Q. And before Mr. Marriott commenced his,  
 5 what we'll call, redirect examination of you, there  
 6 was a break preceding that. Do you recall that?  
 7 A. Yes.  
 8 Q. During that break -- I don't want to know  
 9 any specifics of any discussions between you and  
 10 Mr. Marriott, but I want to know whether or not you  
 11 were aware before you came back into the room for  
 12 your redirect examination any of the topics about  
 13 what you were going to be asked during that  
 14 redirect?  
 15 A. No.  
 16 Q. You were not?  
 17 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE)  
 18 Q. Would you turn to tab five of your April  
 19 2004 declaration, please?  
 20 MR. MARRIOTT: I think the originals are  
 21 in front of you.  
 22 MR. GANT: Which is Exhibit 75. Is that  
 23 right? No. I'm wrong. It's Exhibit 76. Excuse  
 24 me.  
 25 MR. MARRIOTT: Tab four or five?

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1 MR. GANT: Five.  
 2 BY MR. GANT:  
 3 Q. This is the agreement between AT&T and  
 4 Sequent; is that correct?  
 5 A. Yes, it is.  
 6 Q. And this agreement is a standard software  
 7 agreement used by AT&T for UNIX licensing; correct?  
 8 A. That's correct.  
 9 Q. Could you turn to page two of that  
 10 document, which contains language of section 2.01.  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. And I'd like to direct your attention to  
 14 the last sentence of section 2.01, which begins,  
 15 "Such right." Do you see that?  
 16 A. Yes.  
 17 Q. Could you read that sentence into the  
 18 record, please?  
 19 A. "Such right to use includes the right to  
 20 modify such software product and to prepare  
 21 derivative works based on such software product,  
 22 provided the resulting materials are treated  
 23 hereunder as part of the original software  
 24 product."  
 25 Q. Do you acknowledge, Mr. Wilson, that under

<p style="text-align: right;">Page 341</p> <p>1 the terms of section 2.01 a derivative work or  2 modification of the software product, as defined in  3 this agreement, is defined as a resulting material  4 in the agreement?  5 MR. MARRIOTT: Objection as to form. The  6 agreement speaks for itself.  7 THE WITNESS: Yes. I agree. Yes, I do.  8 BY MR. GANT:  9 Q. And do you also acknowledge, Mr. Wilson,  10 that under the terms of section 2.01, resulting  11 materials are to be treated as part of the original  12 software product, as the term software product is  13 defined in the agreement?  14 MR. MARRIOTT: Objection as to form.  15 Lacks foundation. Calls for speculation.  16 THE WITNESS: Yes.  17 BY MR. GANT:  18 Q. Is the term derivative work defined in the  19 standard software agreement?  20 A. No.  21 Q. Is the term modify or modification defined  22 in the standard software agreement?  23 A. It is not.  24 Q. Is it your view that if one wants to  25 ascertain whether or not a particular product is a</p>	<p style="text-align: right;">Page 343</p> <p>1 product?  2 MR. MARRIOTT: Objection as to the form.  3 The document speaks for itself.  4 THE WITNESS: Yes.  5 BY MR. GANT:  6 Q. Do you recall a few moments ago that  7 Mr. Marriott asked you some questions related to  8 hardware that was once in the possession of AT&amp;T  9 Capital?  10 A. Yes.  11 Q. And I believe you testified that you were  12 told by some individuals at AT&amp;T that they might  13 have done something with this hardware. Was that  14 what you were testifying about?  15 A. Yes.  16 Q. I want to understand the details of what  17 you were describing when you answered  18 Mr. Marriott's question. So the first thing I'd  19 like to know is when these discussions occurred?  20 A. I don't recall specifically when they  21 occurred.  22 Q. You don't recall any specific discussions?  23 A. Not that I can identify the time and the  24 individuals I actually talked to. I remember  25 discussions taking place, but it was a long time</p>
<p style="text-align: right;">Page 342</p> <p>1 derivative work or modification, as those terms are  2 used in the standard software agreement, one needs  3 to look at other information to make that  4 determination?  5 MR. MARRIOTT: Objection as to form.  6 Vague.  7 THE WITNESS: When you say, "other  8 information," other than the derivative work  9 itself?  10 MR. GANT: Well, let me -- let me withdraw  11 the question and try it differently.  12 BY MR. GANT:  13 Q. Based on your experience at AT&amp;T how would  14 one ascertain whether or not a particular product  15 is a derivative of or a modification of UNIX?  16 MR. MARRIOTT: Objection as to form.  17 THE WITNESS: You would have to -- you  18 would have to look at the derivative work.  19 BY MR. GANT:  20 Q. And examine that work?  21 A. Yes.  22 Q. Do you acknowledge that under the terms of  23 section 2.01 all derivative works and all  24 modifications of the software product are also to  25 be treated as part of the original software</p>	<p style="text-align: right;">Page 344</p> <p>1 ago.  2 Q. You don't remember who you had the  3 discussions with?  4 A. I do not.  5 Q. You don't remember when the discussions  6 occurred?  7 A. No.  8 Q. Do you remember what, if any, hardware was  9 discussed?  10 A. They talked -- no. The specific hardware?  11 I do not.  12 Q. And, I take it then, you don't know for a  13 fact one way or another whether if any such  14 hardware was disposed of, whether it contained any  15 software?  16 A. That's correct.  17 Q. Mr. Marriott asked you some follow-up  18 questions, which involved the use of the term  19 control. Do you remember that?  20 A. Yes.  21 Q. Do you also remember that I asked you some  22 questions about that term?  23 A. Yes.  24 Q. And do you remember that you testified  25 that the term control appears nowhere in the UNIX</p>



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1 license agreements?  
 2 A. That's correct.  
 3 Q. And your testimony was accurate in that  
 4 regard?  
 5 A. That's what -- yeah. I believe that's  
 6 what I said. Yes...  
 7 Q. So when you used the term control in your  
 8 declaration, that is a term that you've supplied,  
 9 and does not appear anywhere in any of AT&T's UNIX  
 10 license agreements; correct?  
 11 MR. MARRIOTT: Objection as to form.  
 12 THE WITNESS: Yeah. That specific word.  
 13 Yes. That's --  
 14 BY MR. GANT:  
 15 Q. Pardon me?  
 16 A. That's correct.  
 17 Q. Could you turn to paragraph 43 of your  
 18 December 2003 declaration. This -- I'm sorry.  
 19 I'll wait for you to catch up.  
 20 A. Okay.  
 21 Q. This paragraph was not carried into your  
 22 April 2004 declaration; correct?  
 23 A. That's correct.  
 24 Q. So the most current version of your  
 25 declaration doesn't contain paragraph 43 at all; is

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1 that right?  
 2 A. That's correct.  
 3 Q. And you don't know why paragraph -- the  
 4 text that appears in paragraph 43 of your December  
 5 declaration was dropped and not carried into your  
 6 April 2004 declaration; is that right?  
 7 MR. MARRIOTT: Objection as to the form.  
 8 THE WITNESS: That's correct.  
 9 BY MR. GANT:  
 10 Q. Now, as we discussed, the first paragraph  
 11 of -- excuse me. As we discussed, the first  
 12 sentence of paragraph 43 states as follows, "As  
 13 discussed above, when I headed the UNIX licensing  
 14 group at AT&T and USL, our stated policy was to  
 15 treat all of our licensees essentially the same."  
 16 Do you recall discussing that with me?  
 17 A. Yes, I do.  
 18 Q. And I believe you testified that upon  
 19 reflection the word essential shouldn't be in that  
 20 sentence; is that correct?  
 21 A. Yeah. What I stated was I probably --  
 22 exactly was -- was probably more appropriate.  
 23 Q. So it's your testimony that AT&T's stated  
 24 policy was to treat all of its licensees exactly  
 25 the same? Is that your testimony?

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1 MR. MARRIOTT: Objection as to form.  
 2 THE WITNESS: That's correct, given that  
 3 we understand that there were different groups of  
 4 licensees. So if you say, all licensees, all  
 5 licensees were not equal.  
 6 BY MR. GANT:  
 7 Q. I'm not following your explanation.  
 8 A. Well, we had educational licenses. We had  
 9 commercial licenses. We had --  
 10 Q. Okay. Well, I'm -- I'm reading the  
 11 sentence that you put in your declaration --  
 12 A. Rights.  
 13 Q. -- as clarified during your deposition  
 14 today.  
 15 A. Right.  
 16 Q. So let me just make sure we've got this  
 17 clearly. Your declaration, as amended by your --  
 18 your refinement of the language earlier today,  
 19 states, "As discussed above, when I headed the UNIX  
 20 licensing group at AT&T and USL, our stated policy  
 21 was to treat all of our licensees exactly the  
 22 same"?  
 23 A. Yeah. That's correct.  
 24 Q. Okay. That's what your declaration says,  
 25 as modified today; correct?

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1 A. Yes.  
 2 Q. And you stand by that statement?  
 3 A. Yes, I do.  
 4 Q. And it's the case, isn't it, that in  
 5 response to my questioning you were unable to  
 6 identify any written documents that reflected this  
 7 so-called policy to treat all of AT&T's licensees  
 8 exactly the same? Isn't that what you told me when  
 9 I asked you that question?  
 10 A. I believe I qualified it by saying that  
 11 the -- the policy was reflected in our agreements,  
 12 side letters and \$ echo, for example.  
 13 Q. Do you recall adding that qualification  
 14 when Mr. Marriott asked you some questions?  
 15 A. They're running together right now. I'm  
 16 not quite sure who asked the question.  
 17 Q. Is it your testimony that side letters  
 18 entered into by AT&T with licensees sets forth  
 19 explicitly in writing AT&T's supposed policy that  
 20 it will treat all licensees exactly the same?  
 21 MR. MARRIOTT: Objection as to form.  
 22 Misstates the testimony.  
 23 THE WITNESS: Well, the policy, per se,  
 24 was not stated in those side letters. It was --  
 25 those things that were reflected in the side

1 letters were available to all of our licensees.  
 2 BY MR. GANT:  
 3 Q. But the side letters themselves do not set  
 4 forth the policy referenced in the first sentence  
 5 of paragraph 43; is that correct?  
 6 A. That's correct. That's correct.  
 7 Q. And is it also correct that the \$ echo  
 8 publications do not set forth the so-called policy  
 9 of AT&T to treat all of its licensees exactly the  
 10 same?  
 11 A. That's correct.  
 12 MR. MARRIOTT: Objection as to form.  
 13 Q. So to restate my question, which I think I  
 14 asked, but I want to make sure it's clear. Are you  
 15 able to identify any written documents that set  
 16 forth AT&T's supposed policy that it would treat  
 17 all of its licensees exactly the same? Can you  
 18 identify any written document that sets forth that  
 19 policy?  
 20 A. I cannot.  
 21 MR. GANT: I pass the witness back. If  
 22 you're done --  
 23 MR. DAVIS: Scott --  
 24 MR. GANT: No, I'm not. One moment,  
 25 please.

1 (DISCUSSION OFF THE RECORD)  
 2 MR. GANT: Just a few more. Thank you.  
 3 BY MR. GANT:  
 4 Q. I showed you some documents that we marked  
 5 as Exhibits 80 through 85, I believe. Do you  
 6 recall that?  
 7 A. Yes, I do.  
 8 (DISCUSSION OFF THE RECORD)  
 9 BY MR. GANT:  
 10 Q. And we've also looked today at Exhibits 75  
 11 and 76 and the attachments thereto, which contain a  
 12 number of agreements between AT&T and UNIX  
 13 licensees; correct?  
 14 A. That's correct.  
 15 Q. With respect to those agreements, you  
 16 described them as standard form agreements, some of  
 17 them; is that -- is that right?  
 18 A. Yes.  
 19 Q. Who drafted the language for the standard  
 20 form agreement?  
 21 A. By name? Specifically by name?  
 22 Q. Was it an attorney?  
 23 A. Yes.  
 24 Q. Who was it?  
 25 A. Again, I don't know specifically.

1 Q. Did AT&T attorneys draft all of the  
 2 licenses used by AT&T to license its UNIX  
 3 materials?  
 4 A. Yes, they did.  
 5 (DISCUSSION OFF THE RECORD)  
 6 MR. MARRIOTT: We're going a little bit  
 7 beyond the scope, guys.  
 8 MR. GANT: Are you going to have any, if I  
 9 stop now?  
 10 MR. MARRIOTT: Well, yeah, because I have  
 11 questions -- yeah, I do have some.  
 12 MR. GANT: Okay. Then --  
 13 MR. MARRIOTT: But within the scope, I  
 14 think. I mean are you done, because I don't want  
 15 to just hear you have --  
 16 MR. GANT: I'll pass.  
 17 MR. MARRIOTT: No. I want to let you  
 18 finish, and then --  
 19 MR. GANT: No. I'm going to pass it back  
 20 to you. I --  
 21 MR. DAVIS: This is a discovery  
 22 deposition.  
 23 MR. GANT: I just want to put on the  
 24 record our position about whether the deposition  
 25 remains open. So if you're -- if you're done, then

1 I'll --  
 2 MR. MARRIOTT: So you have no more  
 3 questions?  
 4 MR. GANT: That's right. I'll pass the  
 5 witness back.  
 6 MR. MARRIOTT: All right. I have a couple  
 7 of questions.  
 8 REDIRECT EXAMINATION  
 9 BY MR. MARRIOTT:  
 10 Q. Mr. Wilson, with respect to paragraph 43  
 11 of your declaration, which makes reference to a  
 12 policy to treat licensees the same, do you have any  
 13 doubt that that was your policy?  
 14 MR. GANT: Objection. Vague, leading,  
 15 foundation, calls for speculation and for legal  
 16 conclusions.  
 17 THE WITNESS: I do not.  
 18 BY MR. MARRIOTT:  
 19 Q. Did AT&T -- with respect to control, did  
 20 AT&T intend to control any modification or  
 21 derivative work of its software products, except  
 22 insofar as such modifications or derivative works  
 23 might include a portion of the software product?  
 24 MR. GANT: Objection. Leading, vague,  
 25 foundation, compound, calls for speculation and

<p style="text-align: right;">Page 353</p> <p>1 legal conclusions.</p> <p>2 MR. MARRIOTT: I don't think you missed</p> <p>3 any objection known to man, but you can --</p> <p>4 BY MR. MARRIOTT:</p> <p>5 Q. You can go ahead and answer the question.</p> <p>6 Do you need it read back?</p> <p>7 A. No, we did not.</p> <p>8 Q. Did AT&amp;T intend to assert control over its</p> <p>9 licensees' products except to the extent those</p> <p>10 products might include AT&amp;T's software products?</p> <p>11 MR. GANT: Same objections.</p> <p>12 THE WITNESS: We did not.</p> <p>13 BY MR. MARRIOTT:</p> <p>14 Q. Okay. As AT&amp;T understood its -- its UNIX</p> <p>15 agreements, its licensees could do whatever they</p> <p>16 wanted with modifications and derivative works of</p> <p>17 the software product, so long as they did not --</p> <p>18 (DISCUSSION OFF THE RECORD)</p> <p>19 MR. GANT: I'm going to need it read back</p> <p>20 when you're done too.</p> <p>21 BY MR. MARRIOTT:</p> <p>22 Q. -- disclose any portion of the software</p> <p>23 product that might have been in the modification or</p> <p>24 derivative work; is that correct?</p> <p>25 MR. GANT: And before you answer, I'd like</p>	<p style="text-align: right;">Page 355</p> <p>1 true, accurate and complete?</p> <p>2 A. Yes, with the exception of one. I was</p> <p>3 thinking about when you asked me about the wives.</p> <p>4 Q. Yes.</p> <p>5 A. Yeah. I missed one.</p> <p>6 Q. You missed a wife?</p> <p>7 A. Yeah.</p> <p>8 Q. You had three -- three ex-wives?</p> <p>9 A. You said three. You said three. Yeah.</p> <p>10 Q. Okay.</p> <p>11 A. And that was Janet Smith.</p> <p>12 Q. Okay. Thank you for that clarification.</p> <p>13 Beyond that -- and we won't tell her.</p> <p>14 A. Please, don't.</p> <p>15 Q. Is there anything else about your</p> <p>16 testimony in response to my questions that was</p> <p>17 anything other than true, accurate and complete?</p> <p>18 A. No.</p> <p>19 Q. And is there anything about Mr. Marriott's</p> <p>20 follow-up questions, in response to my questions,</p> <p>21 that has led you to conclude that any of your</p> <p>22 answers to my questions were false, inaccurate or</p> <p>23 incomplete?</p> <p>24 A. No.</p> <p>25 MR. GANT: All right. With that, I</p>
<p style="text-align: right;">Page 354</p> <p>1 it read back and then have the chance to object.</p> <p>2 (REQUESTED PORTION OF THE RECORD READ)</p> <p>3 (DISCUSSION OFF THE RECORD)</p> <p>4 BY MR. MARRIOTT:</p> <p>5 Q. As AT&amp;T understood its UNIX licensing</p> <p>6 agreements, could its licensees do whatever they</p> <p>7 wanted with modifications or derivative works of</p> <p>8 the software product, so long as they did not</p> <p>9 disclose any portion of the software product that</p> <p>10 might have been included in the modification or</p> <p>11 derivative work?</p> <p>12 MR. GANT: Same objections.</p> <p>13 THE WITNESS: That's correct.</p> <p>14 MR. MARRIOTT: Okay. Do you want to make</p> <p>15 your statement, and then we can all go home?</p> <p>16 MR. GANT: Well, I just want to ask one</p> <p>17 last question and then make my statement. Then</p> <p>18 we're done.</p> <p>19 MR. MARRIOTT: We may be going at this</p> <p>20 forever.</p> <p>21 MR. DAVIS: You guys should play tennis.</p> <p>22 RECROSS-EXAMINATION</p> <p>23 BY MR. GANT:</p> <p>24 Q. Mr. Wilson, were all of the answers that</p> <p>25 you provided today in response to my questions</p>	<p style="text-align: right;">Page 356</p> <p>1 assume --</p> <p>2 MR. MARRIOTT: Well, I have now one</p> <p>3 question.</p> <p>4 MR. GANT: Okay.</p> <p>5 REDIRECT EXAMINATION</p> <p>6 BY MR. MARRIOTT:</p> <p>7 Q. Is there anything, Mr. Wilson, about the</p> <p>8 testimony that you've provided in response to any</p> <p>9 of my questions that you think was inaccurate or</p> <p>10 incomplete or incorrect or needs in any way to be</p> <p>11 modified?</p> <p>12 A. No.</p> <p>13 MR. MARRIOTT: Thank you.</p> <p>14 Now you can make your statement. I hope.</p> <p>15 MR. GANT: I can.</p> <p>16 For the reasons set forth at the outset of</p> <p>17 the deposition, we reserve the right to resume the</p> <p>18 deposition and to seek any other appropriate relief</p> <p>19 from the court based on the untimely disclosure of</p> <p>20 Mr. Wilson's declarations. Other than that, I</p> <p>21 thank Mr. Wilson for his time.</p> <p>22 MR. MARRIOTT: And I will make just a</p> <p>23 statement.</p> <p>24 There was no untimely disclosure of any</p> <p>25 declarations. The declarations were provided on</p>

OTIS L. WILSON

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1 the schedule provided for by Magistrate Judge  
2 Wells. I think the opportunity that you've had  
3 today to examine this witness has been full and  
4 fair and complete.  
5 And as much as you'd like to describe  
6 the -- the availability of the declarations as  
7 somehow an impediment today, it seems to me, if  
8 anything else, I've given you even a fuller  
9 opportunity at examination of Mr. -- of Mr. Wilson.  
10 And I think with that said, you know our  
11 position, which is that this is it. So -- thank  
12 you.  
13 THE VIDEOGRAPHER: One moment, please. If  
14 you could, just pause a moment.  
15 This concludes the deposition -- this  
16 day's deposition of Otis Wilson. The number of  
17 tapes used was four. The master video tapes will  
18 be retained by Russell Court Reporting,  
19 Incorporated.  
20 Going off the record. The time is  
21 7:27 p.m.  
22 (SIGNATURE RESERVED)  
23 (DEPOSITION CONCLUDED AT 7:27 P.M.)  
24  
25

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WITNESS' CERTIFICATE

1 I, Otis L. Wilson, do hereby certify that I  
2 have read and understand the foregoing transcript  
3 and believe it to be a true, accurate, and complete  
4 transcript of my testimony, subject to the attached  
5 list of changes, if any.  
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O TIS L. WILSON

This deposition was signed in my presence  
by \_\_\_\_\_, on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2004.

Notary Public

My commission expires: \_\_\_\_\_

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1 Russell Court Reporting, Inc.  
2 P.O. Box 507 (Page 1 of 2)  
3 Lewisville, North Carolina 27023  
4 ERRATA SHEET  
5 RE: SCO vs. IBM  
6 DEPOSITION OF: Otis L. Wilson  
7 Please read this transcript with care, and  
8 if you find any corrections or changes you wish  
9 made, list them by page and line number below. DO  
10 NOT WRITE IN THE TRANSCRIPT ITSELF. Return the  
11 Certificate and Errata Sheet to this office after  
12 it is signed. We would appreciate your prompt  
13 attention to this matter.  
14 To assist you in making any such  
15 corrections, please use the form below. If  
16 supplemental or additional pages are necessary,  
17 please furnish same and attach them to this errata  
18 sheet.  
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1 Page \_\_\_\_ Line \_\_\_\_ should (Page 2 of 2)  
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25

1 STATE OF NORTH CAROLINA  
2 COUNTY OF JOHNSTON

3 REPORTER'S CERTIFICATE

4 I, Lisa A. DeGroat, RPR, a Notary Public in  
5 and for the State of North Carolina, do hereby  
6 certify that there came before me on Thursday,  
7 June 10th, 2004, the person hereinbefore named, who  
8 was by me duly sworn to testify to the truth and  
9 nothing but the truth of his knowledge concerning  
10 the matters in controversy in this cause; that the  
11 witness was thereupon examined under oath, the  
12 examination reduced to typewriting under my  
13 direction, and the deposition is a true record of  
14 the testimony given by the witness.

15 I further certify that I am neither  
16 attorney or counsel for, nor related to or employed  
17 by, any attorney or counsel employed by the parties  
18 hereto or financially interested in the action.

19 IN WITNESS WHEREOF, I have hereto set my  
20 hand and affixed my official notarial seal, this  
21 the 15th day of June, 2004.  
22  
23  
24

25 \_\_\_\_\_  
Lisa A. DeGroat, RPR