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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., a Delaware corporation,)	
)	
Plaintiff and Counterclaim-defendant.))	
vs.)	Case 2:04-cv-139dak
)	
NOVELL, INC., a Delaware corporation,)	
)	
Defendant and Counterclaim-plaintiff.))	
)	

BEFORE THE HONORABLE DALE A. KIMBALL
APRIL 30, 2008
REPORTER'S TRANSCRIPT OF PROCEEDINGS
TRIAL TRANSCRIPT
VOLUME II
(Daily copy)

Reported by: KELLY BROWN, HICKEN CSR, RPR, RMR

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A P P E A R A N C E S

FOR NOVELL:

MORRISON & FOERSTER LLP
BY: MICHAEL A. JACOBS
ERIC M. ACKER
DAVID E. MELAUGH
Attorneys at Law
3625 Market Street
San Francisco, California 94105

FOR SCO:

BOIES, SCHILLER & FLEXNER LLP
BY: STUART H. SINGER
EDWARD J. NORMAND
JASON CYRULNIK
Attorneys at Law
401 East Las Olas Blvd, Suite 1200
Fort Lauderdale, Florida 33301

HATCH, JAMES & DODGE, P.C.
BY: BRENT O. HATCH
Attorney at Law
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

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1 Salt Lake City, Utah, Wednesday, April 30, 2008

2 * * * * *

3 THE COURT: You may resume the stand, Mr. Sontag.

4 You may proceed, Mr. Acker.

5 Good morning, everyone.

6 MR. ACKER: Good morning, Your Honor. Thank you.

7 CHRISTOPHER S. SONTAG,

8 called as a witness at the request of Novell,

9 having been previously duly sworn, was examined

10 and testified further as follows:

11 REDIRECT EXAMINATION

12 BY MR. ACKER:

13 Q. Good morning, Mr. Sontag.

14 A. Good morning.

15 Q. You testified yesterday in response to questions of
16 counsel that the price for the SCO intellectual property
17 licenses, that series of licenses we looked at yesterday
18 afternoon, those prices were set as the price equal to the
19 most current version of UnixWare; is that right?

20 A. The most current and applicable version of
21 UnixWare. So single CPU or multi CPU version of UnixWare.

22 Q. So if a potential licensee was using an older
23 version of SVRX, say an older version of 1992 or 1994, and
24 wanted to take one of these licenses, under the SCOSource
25 program, SCO would still charge that licensee the same price

1 they would pay for the most current version of UnixWare;
2 correct?

3 A. That is correct.

4 Q. And that was true for all of the SCOsource IP
5 licenses; correct?

6 A. Yes.

7 Q. Counsel asked you a very direct question yesterday
8 regarding whether or not there is any UnixWare code in Linux.
9 And I wrote down your answer, and you said that there very
10 well could be; correct?

11 A. Yes.

12 Q. But the bottom line is that you simply do not know
13 if there was any unique UnixWare code in Linux; right?

14 A. I believe your question was about uniquely UnixWare
15 code. Given that UnixWare has developed out of, you know,
16 many versions of the UNIX, you know, development tree, much of
17 that code is uncommon. And to uniquely parse out something
18 that's different with UnixWare versus previous releases, I've
19 never done that analysis, never seen this analysis.

20 Q. Do you know if that analysis has ever been done,
21 that is, someone has sat down and parsed out what is unique to
22 the most recent version of UnixWare as opposed to what exists
23 in pre APA SVRX?

24 A. I don't know if that has been done.

25 Q. But the bottom line is that given that testimony,

1 you simply don't know if there's any code that is unique to
2 UnixWare that is in Linux; correct?

3 A. I do not.

4 Q. Counsel also asked you a series of questions about
5 the first phase of the SCOSource program that was referred to
6 initially in late 2002 and early 2003 as the SCO Tech program;
7 correct?

8 A. Yes.

9 Q. And you answered his questions regarding the
10 licensing of libraries of UNIX code; correct? Do you recall
11 that testimony?

12 A. Yes.

13 Q. Now, no licenses were ever issued under that
14 program, that is, the first phase of the program in which it
15 was contemplated that the libraries would be licensed; isn't
16 that right?

17 A. I do not believe there was any specific licenses
18 under that first release of the SCO Tech or early SCOSource
19 license.

20 Q. So the SCO Tech or the SCOSource licenses that
21 actually were issued were the Sun and the Microsoft license as
22 well as the series of additional licenses that we looked at
23 yesterday; correct?

24 A. Yeah. And I would separate out the Sun and the
25 Microsoft licenses from the series that you speak of. They're

1 separate types of licenses.

2 Q. But they were all SCOsource licenses; right?

3 A. They were all under the SCOsource division.

4 Q. Now, regarding the Sun agreement, if we could put
5 up Exhibit 187, Attachment 1, please.

6 Mr. Sontag, we put up on the screen Attachment 1 to
7 the 2003 Sun agreement. The first page of Attachment 1. And
8 you've testified that all of this software license, the 2003
9 license, was included in this attachment and licensed Sun
10 simply as legacy software or older versions of SVRX software
11 that was licensed along with the most recent version of
12 UnixWare.

13 A. Correct. And they already had a license to most of
14 this, anyways.

15 Q. And that was my next question. It's true, isn't
16 it, that Sun already had a license to all of this software on
17 the first page of Attachment 1 of 2002 license; right?

18 A. Yes. And that is -- again, that license for the
19 previous versions was just a standard practice. So, again,
20 licensing the latest version of UnixWare and incidentally
21 licensing all the previous versions.

22 Q. But because -- and that previous license, the 1994
23 Sun license to this exact same 30 versions of software was
24 fully paid up; correct?

25 A. Yes.

1 Q. And so Sun didn't need -- there was no need for Sun
2 to obtain a license. They didn't need a license, a re-license
3 to this additional 30 pieces of legacy software in 2004 except
4 that they wanted to expand their rights to distribute the
5 software; correct?

6 A. Again, this was all included just because it was a
7 standard practice of licensing the UnixWare source code.

8 Q. But Sun already had a license for this software;
9 right?

10 A. Yes.

11 Q. And what they wanted in the 2003 agreement was to
12 expand or, in your words, to soften the confidentiality
13 provisions relating to this software; correct?

14 A. Primarily, they wanted a license to the latest
15 version of UnixWare for their Intel work that they were doing.

16 Q. And with respect to this 30 versions of legacy
17 SVRX, they wanted to soften the confidentiality provisions
18 relating to the software; correct?

19 A. It was a minor part of the agreement.

20 Q. That's what Sun wanted; right?

21 A. Yes.

22 Q. And that's what SCO gave to them; correct?

23 A. Yes. It's all part of the agreement.

24 Q. Now, it's true, isn't it, that not all of this
25 pre-APA SVRX software is in the current version of UnixWare?

1 Correct?

2 A. Probably not. But I would suspect, you know,
3 anything that is valuable and important would still be in the
4 current version of UnixWare.

5 Q. But you've never done a line-by-line comparison to
6 determine what portions of this software, the legacy SVRX
7 software, is actually in the current version of UnixWare;
8 correct?

9 A. I have not.

10 Q. And you're not aware of anyone else having done
11 that analysis; correct?

12 A. I'm not aware of that analysis.

13 Q. And Sun didn't do that analysis, as far as you
14 know; correct?

15 A. Not that I know.

16 Q. And you're not aware of any expert for SCO doing
17 that analysis?

18 A. I'm not aware.

19 Q. And you're not aware of any technician or technical
20 person or engineer of SCO doing this analysis; correct?

21 A. No, I'm not.

22 Q. Now, you testified yesterday and you've already
23 testified today that SCO has a history of including older
24 versions of software when it licenses the most recent versions
25 of software; correct?

1 A. Yes. And SCO's predecessors in the UNIX business
2 did the same thing.

3 Q. But you also testified in answer to your questions
4 to counsel that you'd seen older licenses in which the legacy
5 software was routinely licensed, but recently there had been
6 contracts in which that hadn't been done; correct?

7 A. My understanding was in the most recent release,
8 most versions of the UnixWare source license, they removed the
9 long listings and prior products solely for the purpose of
10 reducing the size of the contract, though the older versions
11 were still implicitly included in those contracts.

12 Q. Well, when you say most recent, what time frame are
13 we talking about?

14 A. I think the chain was made with 7.1.3 versions of
15 the UnixWare source agreements.

16 Q. And what time frame was that?

17 A. That would be within the last, you know, five to
18 seven years. Prior versions 7.1.2, 7.1.1, my understanding is
19 that they did include the listings of all of the prior
20 releases.

21 Q. When you say listings, they would have that long
22 laundry list of the prior SVRX software?

23 A. That's correct.

24 Q. If I could show what we've marked and been admitted
25 as Exhibit 69.

1 (Time lapse.)

2 THE WITNESS: Okay.

3 Q. BY MR. ACKER: Exhibit 69 is a SCO license with a
4 company called CyberGuard; correct?

5 A. Yes.

6 Q. And what is being licensed with CyberGuard is
7 UnixWare 7.0; correct?

8 A. Yes.

9 Q. And this agreement was entered into 10 years ago;
10 right? 1998? Look at the bottom of the first page. See on
11 the signature page?

12 A. Yes.

13 Q. Mr. Broderick signed the license March of '98?

14 A. Yes.

15 Q. And if we take a look at -- we go back to SCO,
16 SCO 0978321. It's Paragraph 4.7 in the attachment.

17 A. 4.7?

18 Q. Yes.

19 A. Okay.

20 Q. See there's a heading there, Prior Products;
21 correct?

22 A. Yes.

23 Q. And the only prior products listed there are
24 UnixWare; correct?

25 A. Yes.

1 Q. And so there is no -- in this contract 10 years
2 old, there is no list of all the prior legacy software;
3 correct?

4 A. It appears to not be the case.

5 Q. So your testimony or your understanding about SCO's
6 practices isn't that always all the legacy software is
7 licensed is not accurate; right?

8 A. It appears in this case for this one particular
9 license. However, my understanding on this practice comes
10 from Bill Broderick who is the one who signed this contract.

11 Q. Kind of curious, isn't it?

12 A. And what he had told me was even if they did not
13 include it, if somebody asked for it, they would provide them
14 with a supplement that did include it.

15 Q. Let me show you what we've marked and admitted as
16 Exhibit 70. Will you take a look at that?

17 A. Okay.

18 Q. Exhibit 70 is another license. And this time it's
19 on behalf of Santa Cruz' predecessor to SCO, an entity called
20 DASCOM, Inc.; correct?

21 A. Yes.

22 Q. And again, this license was entered into 10 years
23 ago; correct?

24 A. Yes.

25 Q. And what was licensed was UnixWare operating

1 system; correct?

2 A. 7 operating system.

3 Q. And then if you go to the attachment,
4 paragraph 4.7, which is on SCO 1043328 --

5 A. Yes.

6 Q. -- do you have that? We have it on the screen.
7 Again, the only prior products listed are SCO UnixWare
8 Release 2.1 and 2.0; correct?

9 A. Those are the only ones listed.

10 Q. And again, we don't have a laundry list of all the
11 prior SVRX product; correct?

12 A. Not in this case.

13 Q. So this is another example that is inconsistent
14 with your understanding of what you've been told about SCO's
15 historical licensing practices; corrects?

16 A. Again, I was told that it was removed at some point
17 to simplify the contract. However, it was provided to any
18 customer that requested those prior releases.

19 Q. Let me show you what we've marked and has been --
20 of what SCO has marked and been admitted as SCO Exhibit 369.

21 A. Okay.

22 Q. SCO Exhibit 369 is a license between a Japanese
23 subsidiary of SCO and an entity called Alps Electric Company;
24 correct?

25 A. Yes.

1 Q. It's dated March 29th, 1996; right?

2 A. Yes.

3 Q. And if you take a look at SCO 1042588, you see --
4 we have it on the screen. This is a license for UNIX
5 Release 2.0. Do you see that?

6 A. Yes.

7 Q. And then if you go back to SCO 1042612, and the
8 attachment here is actually a listing of these prior products,
9 and this exhibit was intentionally left blank. So there was
10 no legacy software included in this license in 1996; correct?

11 A. In this particular license, no.

12 Q. Is it fair to say what we have here in Exhibits 69,
13 70 and 369 are examples that are inconsistent with your
14 understanding of SCO's historical licensing practices?
15 Correct?

16 A. Yes.

17 Q. And you weren't at SCO until 1992; correct?

18 A. At SCO?

19 Q. I mean you weren't at SCO until 2002; correct?

20 A. That is correct.

21 Q. So anything that you've learned about historical
22 licensing practices of the company were simply as a result of
23 something that's been told to you; correct?

24 A. That is correct.

25 Q. In questioning by counsel yesterday, you were asked

1 about -- I want to turn your attention to Section 2.2 of the
2 Microsoft agreement. In response to questions from counsel
3 you testified yesterday that the release and license in
4 Section 2 pertained to UnixWare. Do you recall that
5 testimony?

6 A. Yes.

7 Q. But it's true, isn't it, that Microsoft -- that
8 release and license didn't pertain just to UnixWare, it also
9 pertained to prior SR VX products because Microsoft's concerns
10 about those products being in their products would not have
11 assuaged unless they got released from the earlier products?

12 A. Actually I think the release was for all of SCO's
13 intellectual property rights.

14 Q. And when it includes all of SCO's intellectual
15 property rights that means both UnixWare and prior SVRX
16 products; correct?

17 A. And OpenServer and all of SCO's units and
18 intellectual property rights.

19 Q. And you also testified yesterday that Section 4 of
20 the Microsoft agreement, in that section Microsoft wanted to
21 use UnixWare and other System 4 products in their products;
22 right? Excuse me. They wanted to use UnixWare and other
23 System V products in their products, which is why they took
24 out the license in Section 4 in the Microsoft agreement?

25 A. They took out the license in Section 4 to expand

1 their rights for UNIX to a broader set of products.

2 Q. But your testimony yesterday was Microsoft was
3 considering including in their products both UnixWare and
4 other System V products; right?

5 A. No. The only thing that I would expect that they
6 were intending to include in their products was the latest
7 version of UnixWare. They also might possibly have included
8 some of the OpenServer source code software that we licensed
9 to them. The prior versions would not make sense to include
10 in new products.

11 Q. But it's true you're not aware of Microsoft ever
12 including any of either OpenServer, UnixWare or prior SVRX
13 products in their products; correct?

14 A. I do not know what they have done.

15 MR. ACKER: That's all I have, Your Honor.

16 THE COURT: Thank you, Mr. Acker.

17 Mr. Normand?

18 RE-CROSS-EXAMINATION

19 BY MR. NORMAND:

20 Q. Good morning, Mr. Sontag.

21 A. Good morning.

22 Q. Could you pull up Novell 187? Attachment 1.

23 Mr. Sontag, do you recall being asked about this
24 attachment this morning?

25 A. Yes.

1 Q. This is a list of System V prior products you said
2 earlier?

3 A. Yes.

4 Q. Do you know whether under the 1994 agreement with
5 Sun, Sun had already obtained copies to these System V
6 releases?

7 A. Source tapes or just rights to them?

8 Q. Either.

9 A. My understanding was that they had rights to all
10 these previous releases. I do not know if they had source
11 tapes for any of these previous versions.

12 Q. They had rights to use these -- do you have a view
13 as to whether or not they had rights to use these releases on
14 their CPUs?

15 A. Yes.

16 Q. You were asked about what was described as softened
17 confidentiality restrictions in the 2003 Sun agreement. Do
18 you recall that?

19 A. Yes.

20 Q. Were the confidentiality restrictions that
21 pertained to the older System V technology the same as the
22 confidentiality restrictions that pertained to UnixWare in the
23 2003 agreement?

24 A. I don't necessarily know. My understanding is
25 applied to all the new confidentiality provision in the 2003

1 agreement. My understanding is it applied to all the
2 versions.

3 Q. In your view, was there any difference in the way
4 that Sun could deal with the UnixWare source code as opposed
5 to the older System V releases?

6 A. No.

7 MR. NORMAND: Would you pull up Novell 369.

8 MR. ERIC WHEELER: 369?

9 MR. NORMAND: Yes.

10 THE COURT: SCO 369?

11 MR. NORMAND: Yes, Your Honor.

12 Q. BY MR. NORMAND: Do you recall being shown this
13 document by counsel?

14 A. Yes.

15 Q. This is the Alps agreement, the Nihon Alps
16 agreement?

17 A. Yes.

18 Q. Do you know whether Alps ever told Santa Cruz in
19 the negotiations of this agreement that they had no interest
20 in listing the prior products?

21 A. I do not know.

22 Q. That's not something that you ever discussed with
23 Mr. Broderick?

24 A. No.

25 Q. Pull up the bottom half.

1 What is the date of this agreement, Mr. Sontag?

2 A. March 29th, 1996.

3 MR. NORMAND: Could you pull up SCO 141. Go to the
4 next page. Blow up the bottom half.

5 Q. BY MR. NORMAND: What is the date of this document,
6 Mr. Sontag?

7 A. March 31st, 1997.

8 MR. NORMAND: And could you blow up the top half.

9 Q. BY MR. NORMAND: What do you understand this
10 document to be?

11 A. This is a supplement.

12 Q. Which company is it with?

13 A. With NCR. And I'm not sure what specifically it
14 would be related to.

15 Q. BY MR. NORMAND: Are you able to recognize now what
16 this document pertains to?

17 A. This looks like a UnixWare Release 2.1
18 International Edition right to use sublicensing-type fees and
19 agreement.

20 MR. NORMAND: Would you go to Page 24. Can you
21 blow up the top two thirds.

22 Q. BY MR. NORMAND: And do you recognize what this
23 represents on this page, Mr. Sontag?

24 A. A list of prior products.

25 Q. Now, this document is dated after the Alps license;

1 correct?

2 A. That is correct.

3 Q. And is this document dated after the APA?

4 A. No, it is not.

5 Q. Is it dated after the asset purchase agreement?

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

7 Q. Do you have any idea as to of all the UnixWare
8 licenses that were executed how many of them list the earlier
9 releases of System V?

10 A. I don't specifically, no. But my impression was it
11 was the majority.

12 Q. Who would be the person at SCO who would know that?

13 A. Bill Broderick is the person who would know.

14 Q. Mr. Sontag, who was the principal negotiator for
15 SCO in the 2003 Sun and Microsoft agreements?

16 A. I was.

17 Q. Did either Microsoft or Sun have any UnixWare
18 license prior to entering into those 2003 agreements?

19 A. No, they did not.

20 Q. How much did Microsoft pay for its limited UnixWare
21 license in Section 3?

22 A. In Section 3?

23 Q. Including the option to exercise section.

24 A. About \$8 million, I believe.

25 Q. If I told you 7 million, would that --

1 A. That's, yeah.

2 Q. Now, as between Microsoft's limited license to
3 UnixWare in Section 3 and Sun UnixWare license, who had the
4 broader license?

5 A. Can you repeat the question?

6 Q. As between Microsoft's Section 3 UnixWare license
7 and the UnixWare license that Sun obtained under its 2003
8 agreement, who had the broader license?

9 A. Sun did.

10 Q. In your view, did Microsoft obtain any additional
11 UnixWare rights under Section 4 of its agreement?

12 A. Yes.

13 Q. In your view, did Microsoft pay additional money
14 for its additional UnixWare rights under Section 4 on top of
15 the 7 million in Section 3?

16 A. Yes, it did. I mean, it was significantly
17 broadened, as I testified before.

18 Q. As between Microsoft's full UnixWare license under
19 Sections 3 and 4 and Sun's license, who had the broader
20 license?

21 A. I would view them as being equal.

22 Q. And how much did Sun pay under its 2003 agreement?

23 A. About \$10 million.

24 MR. NORMAND: No further questions, Your Honor.

25 THE COURT: Thank you, Mr. Normand.

1 Anything else of this witness?

2 MR. ACKER: Just a second, Your Honor.

3 (Time lapse.)

4 MR. ACKER: One question.

5 REDIRECT EXAMINATION

6 BY MR. ACKER:

7 Q. You just testified in response to counsel that you
8 viewed the rights that Microsoft obtained under Section 4 of
9 its license as being equal to what Sun obtained; is that
10 right?

11 A. Effectively, yes.

12 Q. Do you believe that Microsoft had open source
13 UnixWare under Section 4?

14 A. No, I don't.

15 MR. ACKER: Nothing else, Your Honor.

16 THE COURT: Thank you. I guess you meant two
17 questions.

18 MR. ACKER: I did. I apologize.

19 THE COURT: Mr. Normand?

20 That's all right.

21 RECROSS-EXAMINATION

22 BY MR. NORMAND:

23 Q. Mr. Sontag, having considered the question that was
24 just asked of you, in your view as between the full UnixWare
25 license that Microsoft had under Sections 3 and 4 and Sun's

1 UnixWare license, who had the broader UnixWare license?

2 A. Specifically to UnixWare, I view that they were
3 about equal. I mean, you also have to take into account,
4 which I don't think I fully explained with the previous
5 question, that Sun had significantly more rights in terms of
6 sublicensing and software distribution rights for their UNIX
7 technologies. So they're way further ahead in many ways. But
8 in terms of just distribution of UnixWare, they were
9 effectively comparable.

10 Q. All right. Would it be accurate to say that Sun
11 had broader rights with respect to UnixWare as to what counsel
12 described as open sourcing?

13 A. Modestly. I think I'm not an attorney, so it would
14 be difficult for me to be able to determine the differences in
15 terms of those agreements.

16 Q. Thank you.

17 THE COURT: Thank you.

18 Anything else?

19 MR. ACKER: No, Your Honor.

20 THE COURT: Thank you.

21 You may step down, Mr. Sontag.

22 I assume this witness may be excused?

23 MR. ACKER: Yes, Your Honor.

24 THE COURT: You can stay or go as you choose,

25 Mr. Sontag.

1 You may call your next witness.

2 MR. ACKER: We would call Mr. Darl McBride, Your
3 Honor.

4 THE COURT: Come forward and be sworn, please,
5 right here in front of the clerk of court.

6 THE CLERK: Come stand up here. Please raise your
7 right hand.

8 DARL CHARLES McBRIDE,
9 called as a witness at the request of Novell
10 having been first duly sworn, was examined
11 and testified as follows:

12 THE WITNESS: Yes, I do.

13 THE CLERK: Thank you. Please take the witness
14 stand right there.

15 Please state your name and spell it for the record.

16 THE WITNESS: Darl Charles McBride. D-A-R-L,
17 C-H-A-R-L-E-S, M-C-B-R-I-D-E.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. ACKER:

21 Q. Good morning, Mr. McBride.

22 A. Good morning.

23 Q. You're currently the CEO of SCO; is that right?

24 A. That's correct.

25 Q. And you came to the company then called Caldera in

1 that same position in June of 2002; right?

2 A. That's correct.

3 Q. And at that time, when you joined Caldera, it was
4 not in great financial shape; correct?

5 A. That is correct.

6 Q. In fact, the company was in somewhat of a
7 turn-around situation. Would that be accurate?

8 A. Yes.

9 Q. The company had not been profitable for the fiscal
10 year ending October 31st; 2002; right?

11 A. Yes.

12 Q. And, in fact, the company had suffered a net loss
13 of more than \$24 million for that year; right?

14 A. I don't remember exactly, but it wasn't in good
15 shape. I know that.

16 Q. And when you first came to Caldera, you met with
17 the top dozen or so managers of the company and asked them
18 what they would do if they were running the company.

19 A. Yes.

20 Q. And during those conversations, one of the
21 managers, John, I believe his name is Terpstra?

22 A. Terpstra.

23 Q. Terpstra, told you that he believed that the UNIX
24 intellectual property exists inside of Linux; right?

25 A. Yes, that's correct.

1 Q. And one of your takeaways or your findings from
2 your meetings with managers was although that the prior
3 management or regime had been focusing on marketing Linux,
4 most of the company's revenue was coming from UNIX; correct?

5 A. Yes, that's correct.

6 Q. And you believed that the course of action had to
7 change in the company in order to become profitable had to
8 turn its attention in protecting its UNIX assets; right?

9 A. That was clearly one of the key strategies
10 that we identified, yes.

11 Q. Let me show you what we have marked and has been
12 admitted as Exhibit 139. Mr. McBride, if you would take a
13 look at that, please, sir.

14 (Time lapse.)

15 THE WITNESS: Okay.

16 Q. BY MR. ACKER: Exhibit 139 is a letter that you
17 wrote to Caldera shareholders on August 12th, 2002; correct?

18 A. Yes, that's correct.

19 Q. And in the first paragraph of the letter or the
20 first numbered paragraph, you wrote:

21 Caldera owns the technology and other key
22 intellectual property rights to UNIX, one of the world's
23 largest, most popular computing platforms.

24 Correct?

25 A. Yes, that's correct.

1 Q. And in the last sentence of that first numbered
2 paragraph, you wrote:

3 We can and will be much more aggressive in
4 marketing and protecting those valuable assets.

5 Right?

6 A. That's correct.

7 Q. And you delineated what those assets were in the
8 prior paragraphs; right?

9 A. Yes.

10 Q. And you delineated them in three groups, UNIX SVRX;
11 right?

12 A. Yes. I wouldn't articulate it exactly the way you
13 are.

14 Q. Well, my question was you separated it out in three
15 separate buckets, didn't you?

16 A. Well, the precursor of those three buckets is the
17 statement right before it, which is the umbrella to those
18 three buckets or really the foundation of those three buckets,
19 which is our UNIX intellectual property. And then we talk
20 about three brands that they may have heard, which are UNIX,
21 SVRX or System V. We use that interchangeably, UnixWare and
22 SCOSource. I call these brands that are on top of the UNIX
23 intellectual property.

24 Q. So the core assets of the company on the bottom is
25 the UNIX intellectual property; is that fair?

1 A. Yes, fair enough.

2 Q. And then built on top of that was UNIX SVRX;
3 correct?

4 A. Well, this is a brand. Again, if you go back to
5 the first thing here, we're talking -- I think it's important
6 that we don't -- we get the right distinction between a brand
7 and, you know, the core assets that we're talking about here.

8 Q. But the core assets, the UNIX core intellectual
9 property underlies all three of these brands; correct?

10 A. The core intellectual property is what is tied into
11 each of these brands, that's correct.

12 Q. And it was the core intellectual property tied into
13 each of these brands that you told shareholders in August of
14 2002 that you sought to protect.

15 A. Yes.

16 Q. And the brands that you delineated were three
17 separate brands, UNIX SVRX; right?

18 A. Yes.

19 Q. UnixWare; correct?

20 A. Yes.

21 Q. And SCO OpenServer; right?

22 A. Yes.

23 Q. And it's true, isn't it, that on several prior
24 occasions, you have described SCO's UNIX assets using a tree
25 analogy?

1 A. Yes.

2 Q. Why don't we bring up Exhibit 421, if we could.
3 Let me give you a copy.

4 And if you take a look at the third page of
5 Exhibit 421, Mr. McBride, or fourth page, that's the tree;
6 right?

7 A. Yes.

8 Q. And in the diagram, the trunk labeled as SCO IP
9 UNIX, that's the core UNIX System V software code; correct?
10 That's what that represents?

11 A. Yes.

12 Q. And the branches on this diagram are derivative
13 works that are based on the core UNIX software code; correct?

14 A. Yes.

15 Q. And those branches include both SCO UnixWare;
16 correct?

17 A. SCO -- that is correct. SCO UnixWare is a little
18 bit unique in this diagram in that it serves both as the trunk
19 of the tree and also as a branch.

20 And so if somebody came to the company and said, we
21 want to get the core intellectual property to UNIX, and we
22 want to take a license for that, for example, IBM did that
23 with us in 1998, we said, okay, if you want to get core access
24 to the UNIX intellectual property or the trunk code, the way
25 you do that is through a UnixWare license.

1 So UnixWare is unique compared to any of these
2 other branches in that the core trunk is where the UNIX
3 intellectual property was held was inside of UnixWare.

4 Q. Well, isn't it true that when you arrived in
5 Caldera in late 2002, you realized that the revenues from the
6 branches UnixWare and OpenServer were, in your words, marching
7 south and dying off; correct?

8 A. They were under severe competition from primarily
9 Linux but also from others. But, yes, they had been going
10 south for a number of years.

11 Q. And because the revenues from the branches UnixWare
12 and OpenServer were marching south and dying off, your
13 strategy was to focus on maximizing the value of the trunk;
14 correct?

15 A. In part, that's correct.

16 Q. And the trunk of the tree is the core SVRX code;
17 correct?

18 A. We call it different things along the way.
19 Sometimes we call it SCO UNIX; sometimes we call it System V;
20 and sometimes we call it SVRX; sometimes we call it UnixWare.
21 But it's all basically the core IP UNIX.

22 Q. And that's the core IP that dates back at AT&T?

23 A. It started at AT&T, but it had evolved dramatically
24 over the years.

25 Q. And it was the core UNIX IP that you and Mr. Sontag

1 and others sought to mine with the SCO source program at SCO
2 in 2002 through 2004; correct?

3 A. We sought to take the core UNIX ownership rights
4 that we had that were primarily embodied in UnixWare and be
5 able to get more value in the marketplace out of that core
6 intellectual property.

7 Q. But you don't know, do you, whether all of the code
8 from the core UNIX IP exists in UnixWare; correct?

9 A. The core -- no, that's not correct. The core code
10 of UnixWare is where the older versions of UNIX have been
11 embodied. It's been that way for years. I worked at Novell,
12 and it was the case then and it's the case now 15 years later.

13 Q. But my question is, do you know if every line of
14 code of the trunk here, do you know if every line of code in
15 this trunk exists in UnixWare?

16 A. I know that if you want to license the trunk code,
17 you'd have to do it through UnixWare.

18 Q. That wasn't my question. My question was, do you
19 know if every line of code in the UnixWare, this core trunk
20 exists in UnixWare?

21 A. That's my understanding.

22 Q. Have you ever done any study to determine that?

23 A. I'm not an engineer. We have some engineers that
24 will be here in the next couple days. I suppose you could ask
25 them that.

1 Q. Do you know if anyone's ever done that?

2 A. Again, that's something you'd have to ask the
3 engineers. What I do know is that the way the core UNIX
4 property was licensed -- I worked for Novell for eight years.
5 I was there when we bought it from AT&T. I was at Novell as
6 an executive when we sold the UNIX property to SCO. And I
7 know that when we were at Novell we made a conscious decision
8 to take the core UNIX code that we bought from AT&T and have
9 it embodied in UnixWare. It was part of the strategy. And
10 that strategy has continued on over the years.

11 Q. And that was UnixWare that existed prior to the
12 APA; correct?

13 A. It started prior to the APA in UnixWare. It has
14 continued on that way.

15 Q. Let me show you what we've marked as Exhibit 173.

16 (Time lapse.)

17 Q. BY MR. ACKER: Exhibit 173 is a press release
18 announcing the SCOSource licensing program dated January 22nd
19 of 2003; correct?

20 A. Yes.

21 Q. Would you take a look at the paragraph under
22 SCOSource. This is was a description that the company gave of
23 what SCOSource was; correct?

24 A. Yes.

25 Q. And how you described it in January of 2003 was

1 that:

2 SCO patents, copyrights and core technology
3 date back to 1969 when Bell Laboratories created
4 the original UNIX source code.

5 Correct?

6 A. Yes.

7 Q. And it was that software, that is the core
8 technology dating back to 1969 that would be licensed in the
9 SCOsourc program; correct?

10 A. Part of it was that. There was other things in
11 there.

12 Q. Let me show you what we've marked Exhibit 194.
13 (Time lapse.)

14 Q. BY MR. ACKER: This is a letter that you wrote to
15 over 1,000 companies in May of 2003; correct?

16 A. Yes.

17 Q. And this is a letter written in conjunction with
18 the SCOsourc licensing program; correct?

19 A. In part.

20 Q. And in the first sentence you wrote:

21 SCO holds the rights to the UNIX operating
22 system originally licensed by AT&T to
23 approximately 6,000 companies and institutions
24 worldwide, the UNIX licenses.

25 Correct?

1 A. Yes.

2 Q. And if we could go down to the last two paragraphs,
3 in the fifth paragraph, you write:

4 Many Linux contributors were originally UNIX
5 developers who had access to UNIX source code
6 distributed by AT&T and were subject to
7 confidentiality agreements including
8 confidentiality of the methods and concepts
9 involved in software design.

10 And then you continue:

11 We have evidence that portions of the UNIX
12 System V software code have been copied into
13 Linux.

14 That's what you told these 1,000
15 companies; correct?

16 A. That's correct.

17 Q. And in the last paragraph, you wrote:

18 As a consequence of UNIX' unrestricted
19 authoring process, it is not surprising that the
20 Linux distributors do not warrant the legal
21 integrity of the Linux code provided to the
22 customers. Therefore, legal liability that may
23 arise from the Linux development process may also
24 rest with the end user.

25 That's what you sold these companies;

1 correct?

2 A. That's what the general license says.

3 Q. And the companies were the end users; right?

4 A. Yes.

5 Q. So what you're telling these companies in May of
6 2003, is, look, our core intellectual property dating back to
7 AT&T is in Linux; right?

8 A. Yes.

9 Q. And you're using Linux; correct?

10 A. That's correct.

11 Q. Therefore, you're going to have to take a license
12 from us.

13 A. I don't see anything in here that says you have to
14 take a license from us.

15 Q. You're telling them you should consider whether or
16 not you should take a license from us; right?

17 A. You have to show me where that is. I don't see it.

18 Q. What was the intent for writing the letter other
19 than to put these companies on notice that you believe that
20 your core intellectual property was in Linux and they were
21 using Linux and may be, in your words, legal liability for the
22 end user?

23 A. I think "notice" is the right word you used there.
24 That's what we were trying to do is put them on notice. I had
25 met with IBM several months prior to this. And IBM said to me

1 directly that you cannot come after us because we do not do
2 Linux distributions. That's between you and an end user. And
3 because we don't do distributions, you can't sue IBM. That's
4 one of the things they told us. And, you know, if you read
5 the general public license, it does say that. It says, a
6 caveat emptor phrase in the general public phrase that says
7 you are getting this license for Linux for free, and be aware
8 if somebody comes after you for intellectual property problems
9 we're absolved from that. I'm paraphrasing now, but that's
10 essentially what it says.

11 Q. But you not only told these 1,000 companies that
12 our, SCO's, technology is in Linux, and you're using Linux and
13 you may have liability, you also gave them a specific example
14 where you initiated legal action in this letter; didn't you?

15 A. Yes, we did.

16 Q. Why don't we turn to the second page.

17 In the first sentence of this paragraph, you wrote:

18 We believe that Linux infringes our UNIX
19 intellectual property and other rights.

20 Correct?

21 A. Yes, that's correct.

22 Q. And there you're talking about the trunk of the
23 tree, the core UNIX intellectual property; right?

24 A. I don't believe it says that in there.

25 Q. But that's what you're referring to; correct?

1 A. I'm referring to a number of things.

2 Q. Isn't it true --

3 A. I'm referring to things that are in the trunk and
4 I'm referring to things in the branches and things that may
5 have been in the leaves.

6 Q. You're referring to all three, the whole tree?

7 A. There were a lot of things going on. And when you
8 go into a bookstore and you go to the section in the bookstore
9 that says, how to program in UNIX. And then you go to the
10 section that says, how to program in Linux, there's not one.
11 It's the same thing. It's the same book. It's the same
12 thing. Linux is a replica of our UNIX, period.

13 Q. But let me just make this clear. When you wrote:

14 We believe that Linux infringes our
15 intellectual property rights.

16 You were referring in part to the core intellectual
17 property that existed in the trunk of your tree diagram;
18 correct?

19 A. As I said earlier, I was referring to all parts of
20 the tree.

21 Q. Including the core in the trunk?

22 A. Including System V that was embodied in UnixWare
23 that was in the trunk, that's correct.

24 Q. And then you told them you not only put them on
25 notice, you flat-out told them:

1 We intend to aggressively protect and enforce
2 these rights.

3 A. That's absolutely correct.

4 Q. You're basically telling them, take a license or
5 we're going to sue you.

6 A. You're going to have to show me where it says that.

7 Q. Well, you then told them:

8 We intend to aggressively protect and enforce
9 our rights.

10 And then you told them:

11 We already sued IBM.

12 Correct?

13 A. Yes. So where does that say we're going to go out
14 and sue everybody else? I don't see that in there.

15 Q. Well, when you wrote the letter, the user did not
16 take a license, was it your intent to bring legal action?

17 A. Our intent when we started the SCOSource licensing
18 program was very simple. We wanted very much to protect the
19 property. In fact, I had a meeting with IBM weeks after I
20 joined the company with Mr. Steve Solazzo, who was a senior
21 executive over there. And I talked to him about the idea of
22 going out and protecting our intellectual property, UNIX and
23 asked his advice on it.

24 And he said he thought that was a great idea. He
25 said IBM does that, and we collect over a billion dollars a

1 year from our licensing efforts. Now occasionally, you have
2 to file a lawsuit, yes. It's not the preferred path. It can
3 be very expensive, as we found out in the cases we're dealing
4 with here. But you also find that if you don't stand up and
5 protect yourself and you don't protect your rights, then you
6 are going to have a property that is going to get run over,
7 and you're not going to have any value left in it.

8 So the core idea here was to protect these rights
9 through a licensing program as the IBM executive had given me
10 the idea.

11 Q. And that licensing program was SCOSource; correct?

12 A. That's correct.

13 Q. And although it was not the preferred route to go,
14 you understood that there may be the need to bring action if
15 these companies who you believe were infringing SCO's
16 intellectual property refused to take a license under
17 SCOSource; correct?

18 A. That's how IBM played the game, and that's how we
19 were trying to play the game.

20 Q. And in June of 2003 -- excuse me -- in 2003, after
21 SCO announced the SCOSource licensing deals with Sun and
22 Microsoft and public filings, SEC filings, and press releases,
23 Novell through its general counsel asked you for copies of
24 those agreements; correct?

25 A. Which agreements are you talking about?

1 Q. Sun and Microsoft.

2 A. Yes.

3 Q. And Sun and Microsoft are SCOsource licenses;
4 right?

5 A. They were UnixWare licenses.

6 Q. Well, isn't it true that the Sun and Microsoft
7 licenses are SCO's -- are licenses under the SCOsource
8 licensing program?

9 A. They were UnixWare licenses that were embodied in
10 the SCOsource division.

11 Q. Well, I guess I'm going to have to ask the question
12 again.

13 Were the Sun and Microsoft licenses SCOsource
14 licenses or not?

15 A. No. They were UnixWare licenses.

16 Q. Let me show you what we marked as Exhibit 215.

17 THE COURT: 215?

18 MR. ACKER: Yes, sir. It's been admitted.

19 (Time lapse.)

20 Q. BY MR. ACKER: Have you had a chance to look at
21 215, sir?

22 A. Yes.

23 Q. It's a letter to you from Mr. LaSala, the general
24 counsel of Novell, dated June 24, 2003; correct?

25 A. Correct.

1 Q. And in the first sentence in the first section of
2 the letter, Mr. LaSala references Section 416(B) of the asset
3 purchase agreement; correct?

4 A. Yes.

5 Q. And then look at the next slide, please. Next one.

6 And in the second page of the letter at the bottom,
7 Mr. LaSala demands to see copies of the Sun and Microsoft
8 agreements; correct?

9 A. Yes.

10 Q. And you refused to provide those; correct?

11 A. Yes.

12 Q. And at the time that you refused to provide those,
13 you were -- SCO was the fiduciary of Novell; correct?

14 Fiduciary relationship between with two entities; is that
15 right?

16 MR. SINGER: Objection. It calls for a legal
17 conclusion which the Court has already determined.

18 THE COURT: It does call for a legal conclusion.
19 I'll let you ask him about his understanding about that if he
20 has one.

21 Q. BY MR. ACKER: Well, you understood that under the
22 APA you were the agent for Novell to collect licenses or
23 collect royalties for SVRX licenses; correct?

24 A. Correct.

25 Q. And you understand now, don't you, that this Court

1 has determined that you were actually -- there was a fiduciary
2 relationship between the two companies; correct?

3 A. For those licenses.

4 Q. But you refused to provide the Sun and Microsoft
5 licenses to Novell; correct?

6 A. Correct.

7 Q. Now --

8 A. And can I explain?

9 THE COURT: Yes.

10 Because he understands my order doesn't mean he
11 agrees with it, though.

12 MR. ACKER: I'm fully aware of that, Your Honor.

13 THE WITNESS: Can I explain?

14 THE COURT: Yes. You weren't done with your
15 answer, so go ahead and answer.

16 THE WITNESS: Yes.

17 So my view of those two licenses was that Novell
18 had no more standing to ask us to produce those licenses to
19 them than the court reporter here has standing to ask for
20 those. So it didn't make any sense that we would send it to
21 them.

22 Q. BY MR. ACKER: So it was your position that the
23 court reporter here in this courtroom today has the same
24 standing to ask for those licenses as Novell did in 2003?

25 A. For the UnixWare licenses with Sun and Microsoft,

1 absolutely correct.

2 Q. Okay. Why didn't you provide those copies of those
3 licenses to Novell and explain your position?

4 A. Same reason I wouldn't provide them to her if she
5 asked for them. She didn't have any standing, and Novell
6 didn't have any standing with respect to those licenses. Why
7 would we send them to her? Why would we send them to you?
8 Why would we send them to Novell? We had all the standing in
9 the world to do those UnixWare licenses.

10 And what -- the other thing, the context I would
11 like to bring this out in is this letter comes in a series of
12 about two dozen letters over a couple months. And it comes on
13 the heels of Novell sending out a letter to the world telling
14 them that they, in fact, are the copyright owner of UNIX and
15 that they're going to use that copyright ownership to come
16 after SCO and attack us for the good of the Linux community.
17 They were currying favor with the Linux community.

18 Five days after that, my secretary found
19 Amendment 2 that amends the asset purchase agreement that says
20 in part SCO has the copyrights necessary to exercise its
21 rights under the asset purchase agreement for UNIX and
22 UnixWare.

23 Upon finding that agreement, that amended agreement
24 to the asset purchase agreement, I called the CEO of Novell,
25 Jack Messman and asked him if he had read Amendment 2. And he

1 said, no, I have not seen Amendment 2. What is that? And I
2 said essentially what I just said to you, that it talks about
3 us having the rights to the copyrights.

4 He said, I've never seen that. Is this a trick?
5 And I said, no, it has Novell's signature on it. Tim Tolman
6 had signed it. Will you fax it to me? This is 7 o'clock at
7 night his time.

8 I faxed it to him. Jack Messman, CEO of Novell,
9 called me back within five minutes after reading Amendment 2,
10 and he said to me, okay, Darl, SCO has the copyrights, what do
11 you want? That's what he said. And I -- I don't need to go
12 into detail about everything that we talked about. But I
13 basically said, we need a retraction. We need you to come
14 back and tell the world that you, in fact, don't own the
15 copyrights, that we do. And then we need to talk about
16 damages. And when I said damages, he got upset and hung up.

17 But within 12 hours of that phone call, Novell
18 issued a press release to the world that said, SCO has
19 produced to us an amendment to the copyrights -- or to the
20 asset purchase agreement. It wasn't in our files, but it
21 appears that it is correct that SCO owns some copyrights. And
22 so we're backing down off from this.

23 Within days after that -- so that was the immediate
24 reaction from Novell. That's why I it was always interesting
25 to me the immediate reaction from not an attorney that is paid

1 to litigate, but from the guy on top said, okay, you've got
2 the copyrights. What do you want me to do about it?

3 They immediately send out -- he gets with his
4 general counsel. They immediately send out a press release to
5 the world that says, SCO owns the copyrights. And then a few
6 days later, realizing that they're in litigation, I presume,
7 with their outside attorneys, we get a series of letters that
8 come at us one after another after another. It's like, it's
9 like carpet bombing. Carpet bombing of legal letters of one
10 thing after another after another including a reversal of
11 their position that they say on the copyrights which they say,
12 well, I know we said that you're right. We know we sent the
13 letter out. But the more we think about it, the more we think
14 we still own the copyrights.

15 Then they sent out a letter like this that says,
16 oh, and we want to see the Sun and Microsoft things. And, oh,
17 by the way and by the way and by the way. There were dozens
18 of those letters that came at us.

19 So how serious did I take this? Well, I took it
20 about as serious as I took the other two dozen, which is
21 they're in litigation. They're attacking. They're in full
22 attack mode. Did we read every letter? Did we respond to
23 every letter as necessary? Yeah. There were some in there
24 that had some legitimacy to them. I didn't view this as one
25 of them.

1 Q. BY MR. ACKER: In response to this letter, you
2 never responded back to Mr. LaSala and said, you're not
3 entitled to see those, did you?

4 A. Every one of these letters that came in I took over
5 and handed to Mr. Tibbits over here, the general counsel, and
6 I don't know what happened to them after that. So you have to
7 ask him.

8 Q. And you never wrote a letter back and said, you're
9 not entitled to those Sun and Microsoft agreements because
10 they're UnixWare agreements. You never said that; correct?

11 A. I personally don't know what happened. Again, this
12 is a legal letter that's coming at me. I gave it to my
13 general counsel. You'd have to query him on what he did with
14 them because I really don't know.

15 Q. So if we wanted to understand what it was with
16 SCO's response to Novell's request to see the Sun and
17 Microsoft agreements, we have to look at what Mr. Tibbits said
18 in his letters back to Novell; correct?

19 A. Again, that would be the place I would go.

20 Q. Okay. We'll take a look at that.

21 If we could bring up Exhibit 294, please.

22 (Time lapse.)

23 THE WITNESS: Okay.

24 Q. BY MR. ACKER: Exhibit 294 is a letter from
25 Mr. Tibbits written to Mr. LaSala on February 5th, 2004;

1 correct?

2 A. Yes.

3 Q. And if we could go to the last paragraph from the
4 bottom of the first page carrying over to the second page.
5 And in that letter, Mr. Tibbits writes:

6 In your letter you assert that SCO has
7 unilaterally amended and modified SVRX licenses
8 with Sun, Microsystems and Microsoft. You claim
9 this characterization is based on public
10 statements by SCO, but you do not identify where
11 SCO made these alleged statements. By your
12 citation of Paragraph 4.16(B) of the APA and
13 Section B of the Amendment 2, it appears you are
14 concerned about the proper flow of royalty
15 revenues to Novell under the APA.

16 And you understand that at the time that when Mr.
17 LaSala and others at Novell were repeatedly writing letter to
18 you and others at SCO, they were concerned about the flow of
19 the SVRX royalties; correct?

20 A. I didn't know that at the time. You'd have to ask
21 Mr. Tibbits about that.

22 Q. That's what Mr. LaSala said in his letters to you;
23 correct?

24 A. That wasn't my view.

25 Q. And in response to that concern from Novell that

1 these were SVRX licenses and that Novell was entitled to SVRX
2 royalties, Mr. Tibbits wrote:

3 To the limited extent that Novell may have
4 rights under Paragraph 4.16 of the APA to protect
5 its revenue stream from SVRX licenses that were in
6 existence at the time of the APA, those rights do
7 not extend to the new contract with Sun and the
8 new contract with Microsoft.

9 Correct?

10 A. Correct.

11 Q. So it was SCO's position back in 2003 that the
12 reason that Novell was not entitled to these licenses is
13 because these were licenses that were entered into after the
14 date of the APA; correct?

15 A. Yes.

16 Q. And there was no mention in this letter from
17 Mr. Tibbits to Novell in 2003 that Novell was not entitled to
18 that revenue because they were UnixWare licenses; correct?

19 A. Well, it says the Microsoft agreement is the new
20 agreement not covered by the APA.

21 All the licensing going forward was done for UNIX
22 to a UnixWare license. Novell had no rights to do that.

23 So --

24 Q. But SCO's position back in 2003 is that Novell was
25 not entitled to these monies because they were licenses that

1 were entered into after the date of the APA; correct?

2 A. The new license would be a UnixWare license. And
3 so if it was done after the APA, it would be a UnixWare
4 license and it wouldn't be covered. The only thing that
5 Novell had rights to was the preexisting royalties that SCO
6 didn't buy out as part of the '95 transaction.

7 Q. But what Mr. Tibbits told to Mr. LaSala was not
8 that. What Mr. Tibbits told to Mr. LaSala is, these were new
9 agreements after the APA; therefore, you're not entitled to
10 royalties; right?

11 A. That's what it says there.

12 Q. And what Mr. Tibbits said to Mr. LaSala was not
13 that we licensed some SVRX, but it was incidental to UnixWare,
14 but rather these are new agreements after the date of the APA;
15 therefore, you don't get money; right?

16 A. Well, I think you can take bits and pieces of words
17 and say, here's what it was then. But if you take the
18 approach that the company has done over the years, it is to
19 license UnixWare. And if incidentally along the way, there is
20 SVRX that ties to those things incidentally, then, yes, we
21 have a right to license them.

22 Q. But that's not what Mr. Tibbits told Mr. LaSala.

23 A. I don't see that in there, no.

24 Q. And that was the position of SCO in 2003;
25 correct?

1 A. That's what Mr. Tibbits' letter says.

2 Q. So it's true, isn't it, that six times between 2003
3 and November of 2004 Novell asked SCO to provide it with a
4 copy of the Sun and Microsoft agreements; true?

5 A. I'm not sure. I wasn't involved in the
6 discussions.

7 Q. But the existence of those agreements had been
8 disclosed in press releases, articles and SEC filings;
9 correct?

10 A. Yes.

11 Q. Yet, SCO refused to provide copies of those
12 agreements to Novell, an entity it owed fiduciary duty to;
13 correct?

14 A. We didn't have a fiduciary duty to Novell for these
15 contracts and licenses, so why would we?

16 Q. And it's true, isn't it, that never before had SCO
17 refused to provide a contract or to provide information
18 regarding a contract to Novell when asked by Novell; correct?

19 A. I don't know the history of that.

20 Q. Let me show you Exhibit 326.

21 (Time lapse.)

22 Q. BY MR. ACKER: It's an article that you're quoted
23 in from eWEEK, dated April 13th, 2005; correct?

24 A. Correct.

25 Q. And in the article there's a discussion about Sun's

1 plans to open source its OpenSolaris products; correct?

2 A. Yes.

3 Q. And there's a quote attributed to you where you
4 say:

5 We have seen what Sun plans to do with open
6 Solaris, and we have no problem with it.

7 Do you see that?

8 A. Yes, I do.

9 Q. Is that quote accurate?

10 A. Yes.

11 Q. And is it true -- it's true, isn't it, that the
12 bottom line is you don't believe there's anything improper
13 about Sun's open sourcing of its Solaris product; correct?

14 A. No.

15 Q. And SCO does not have a problem with what Sun did
16 in open sourcing Solaris after the execution of 2003 Sun
17 licensing deal; right?

18 A. Correct.

19 Q. And you would agree, wouldn't you, that what Sun
20 has done with its OpenSolaris products it has the right to
21 package that Sun obtained from SCO in its 2003 license?

22 A. That's what I said.

23 Q. And it's true, isn't it, that Sun's OpenSolaris is
24 a derivative of UNIX System V?

25 A. Yes, it is.

1 Q. As --

2 A. I'd like to -- are you off that thread, or can I
3 explain why I made those statements?

4 Q. Well, counsel is going to have an opportunity to
5 ask all the questions you want. I'm sure you can make all the
6 statements you want.

7 A. Okay. That's fine.

8 Q. As the CEO of either Caldera or SCO, have you ever
9 certified an SEC filing, either a Form 10K or 10Q with the
10 knowledge that it contained a false statement?

11 A. Not that I'm aware of.

12 Q. If we could take a look at Exhibit 190.

13 Mr. McBride, feel free to look at any portion of
14 that, but I'm going to ask you about specific sections of it.

15 A. Do I have to read this again? These are brutal
16 enough to go through the first time.

17 Q. Why don't you take a look at the second-to-the-last
18 page of the document. You see there's a certification by you
19 of Caldera's Q for the period ending April 30th, 2003. Do you
20 see that?

21 A. Yes.

22 Q. And before signing -- or having the electronic
23 signature affixed to the certification, did you read the Q?

24 A. Yes, I did.

25 Q. And when you read it I assume sometime in May or

1 June of 2003, did you think everything in it was accurate?

2 A. I hope so or I wouldn't have signed it.

3 Q. Okay. Why don't you take a look at Page -- the
4 paragraph beginning on Page 20 and running over to Page 21 of
5 Exhibit 190.

6 A. Okay.

7 Q. This is a description of the SCOSource program;
8 correct?

9 A. Yes.

10 Q. And in 2003 when describing that program, you
11 included in it the Sun and Microsoft agreements; correct?

12 A. Yes.

13 Q. And how you describe the SCOSource program was, the
14 Q was written:

15 One of the assets that we acquired from
16 Tarantella --

17 And that happened in 2001; correct?

18 A. Yes.

19 Q. -- was the intellectual property rights to UNIX.
20 Correct?

21 A. Yes.

22 Q. And those rights that you're referring to that SCO
23 acquired in 2001 were rights that initially had been developed
24 according to the Q by AT&T Bell Labs, and over 30,000
25 licensing and sublicensing had been entered into with

1 approximately 6,000 entities.

2 Do you see that?

3 A. Yes.

4 Q. So the rights that you're talking about protecting
5 in the SCOSource program are the rights acquired in 2001 from
6 Tarantella; correct?

7 A. Yes.

8 Q. And those rights date back to code that had been
9 developed in AT&T labs; right?

10 A. It started in AT&T Labs. But at the point in time
11 that we were talking about in 2001, if you were going to try
12 to run the software in the 1968 AT&T Labs code, you would have
13 to have a punch card to make it work.

14 Q. Okay.

15 A. The point is this was a continuous effort. It
16 didn't stop in 1969. And that's all of the things we were
17 licensing. It started at AT&T, and clearly there were a
18 number of contracts that were tied to that period of time.
19 But the technology clearly evolved.

20 Q. But the rights that you are referring to here are
21 rights that you obtained in 2001 from Tarantella.

22 A. Yes. But what I'm saying is the Tarantella
23 property itself had evolved in time, as well. So, yes. Some
24 of those were done in AT&T days; some were done in Novell
25 days; some were done in SCO, Tarantella and ultimately

1 Caldera.

2 Q. And then the last sentence of this paragraph you
3 wrote or was written:

4 We believe these operating systems are all
5 derivatives of the original UNIX source code owned
6 by us.

7 Do you see that?

8 A. Yes.

9 Q. And the UNIX source code that you're referring to
10 there, again, were the rights that were obtained in 2001 from
11 Tarantella?

12 A. Yes.

13 Q. And then you write:

14 We initiated the SCO source efforts to review
15 the status of these licensing and sublicensing
16 agreements and to identify others in the industry
17 that may be currently using our intellectual
18 property without obtaining the necessary licenses.

19 Do you see that?

20 A. Yes.

21 Q. And again, that intellectual property that you're
22 referring to again is that UNIX source code; correct?

23 A. Yes.

24 Q. And this effort resulted in the execution of two
25 licenses during the April 30th, 2003, quarter; right?

1 A. Yes.

2 Q. And those two licenses were the Microsoft license
3 and the Sun license; right?

4 A. Correct.

5 Q. And the way that you described -- or the Microsoft
6 license was described in 2003 or the Sun license was
7 described, even though its's not identified as such here is:

8 The first of these licenses was with a long
9 time licensee of the UNIX source code which is a
10 major participant in the UNIX industry and was a
11 cleanup license to cover items that were outside
12 of the scope of the initial license.

13 That's the way it was described in 2003; correct?

14 A. Uh-huh (affirmative).

15 Q. That's the Sun license. In 2003 SCO described it
16 as a cleanup license; is that right?

17 A. That's what it says.

18 Q. A cleanup license referring back to its original
19 license from 1994; correct?

20 A. It says:

21 A cleanup license to cover items that are
22 outside of the scope of the initial license.

23 Well, if you want to put a magnifying glass and
24 say, what are the things that were outside of the scope of the
25 initial license? It would have been the work that was done

1 from the time of the '94 agreement up to 2003. And primarily
2 the value of the technology in those Jonathan Schwartz, the
3 president and CEO of Sun, has said multiple times, was
4 relating to the software drivers that attached to UnixWare.
5 Those were the things that were outside of the scope of that
6 initial license.

7 Q. But it also provided Sun with the ability to open
8 source Solaris, which it hadn't been able to do under the 1994
9 license; correct?

10 A. Sun had more broad rights than anybody in the
11 industry with respect to how widely they could distribute
12 their product. They paid nearly \$100 million for these
13 rights. And what Sun had that was unique that when they did
14 the original deal for \$83 million was they got the right to
15 redistribute source. That was very unique.

16 And so although it was not exactly open sourcing,
17 it was so broadly spreading the source out there that it was
18 going to be very hard for the company to protect that. That's
19 why they paid so much for it at the time they did it.

20 So there was a very broad opening in the technology
21 with Sun that was finished off at the point in time that we
22 did the agreement in 2003.

23 Q. Why don't we take a look at Page -- if we go to
24 Page 22. If we could highlight the bottom two paragraphs.

25 Here later in the Q in this paragraph above, you

1 describe what the revenue is for UnixWare products for the
2 Court; right?

3 A. Yes.

4 Q. That does not include the Sun or Microsoft
5 agreements; correct?

6 A. Let me look at it here for a second.
7 Right.

8 Q. So in the Q in 2003, we're describing what the
9 revenue was for UnixWare licensing. Did you not include
10 either the Sun or Microsoft revenues? Correct?

11 A. Correct. Can you bring up the tree picture again?

12 Q. And then when you do talk --

13 THE COURT: Your counsel can do it if he wants to
14 when he asks you questions.

15 THE WITNESS: Can I describe it then?

16 Q. BY MR. ACKER: When we talk about licensing, which
17 is the SCOSource program --

18 A. Right.

19 Q. -- that's where the Sun and Microsoft revenues
20 were; correct?

21 A. These were tied into the trunk, if you will, of the
22 tree licensing, which is UnixWare. There was also the branch
23 UnixWare. So if you were going to put this back on the tree
24 picture, you would take the first two versions up there and
25 say, OpenServer was a branch, UnixWare was a branch. Those

1 were kept out in the marketplace. Those were sold through our
2 channels. When you're talking about licensing programs, those
3 were different channels, it was the trunk code. But those
4 were always 100 percent. Those contracts were driven off of a
5 UnixWare license.

6 Q. Let me understand your testimony. So when you're
7 talking about the UnixWare and OpenServer licensing revenue in
8 the Q, you're talking about the branches of the tree; correct?

9 A. Yes.

10 Q. But when you're talking about the Sun and Microsoft
11 and SCOsource licensing, you're talking about the trunk, the
12 core UNIX IP; correct?

13 A. That's the way I would depict it, yes.

14 Q. And the core trunk or UNIX IP dates back to AT&T;
15 correct?

16 A. It started at AT&T and evolved over time.

17 Q. Let me show you what we've marked as Exhibit 304.
18 It's also been admitted.

19 A. So I'm a little bit troubled that you were trying
20 to imply that I was not telling the truth in my 10Q here. I
21 don't understand what --

22 Q. I'm not implying anything, Mr. McBride. I'm asking
23 questions --

24 A. You said that.

25 Q. I asked you if you have ever not told the truth in

1 your Q.

2 A. Right.

3 Q. And what you're telling me is that you have told
4 the truth in your Q.

5 A. Okay. I just wanted to make sure it was clear.

6 Q. Let me ask you that. You always have told the
7 truth; correct?

8 A. Yes.

9 Q. And so what we read to you is accurate; is that
10 right?

11 A. Yes.

12 Q. And the Sun and Microsoft licenses, those were not
13 included as UnixWare licensing revenue; correct?

14 A. They were included as part of the licensing revenue
15 that went to the trunk code of UnixWare.

16 Q. They were not included in the Q as UnixWare or
17 OpenServer licensing revenue; correct?

18 A. Not as part of the branch revenue, no.

19 Q. And that was accurate; right?

20 A. Pardon?

21 Q. That was accurate?

22 A. Yes.

23 Q. When you said that in 2003, it was accurate; right?

24 A. Yes.

25 Q. And it's still accurate as you sit here today?

1 A. Yes. I wanted to make sure we were clear on that.

2 Q. Why don't we take a look at Exhibit 304. This is
3 another Q for the quarterly period ending April 30th, 2004.
4 And again, you would have read this before it went out;
5 correct?

6 A. Yes.

7 Q. Why don't we go to Page 40. Do you see on Page 40,
8 Mr. McBride, there is -- at the top of the chart, there is a
9 depiction of what revenue was generated for UnixWare revenue
10 for the quarter ending April 30th, 2004; correct?

11 A. Yes.

12 Q. And you had it both for the three months ending
13 April 30th, 2003, and for the three months ending April 30th,
14 2004, as well as for the six months ending April 30th, 2003,
15 and for the six months ending April 30th, 2004; correct?

16 A. Yes.

17 Q. And this UnixWare revenue in the Q for April 30th,
18 2004, none of that involves the Sun or Microsoft licenses;
19 right?

20 A. Those would have been done through our licensing
21 program, not through the products program.

22 Q. Okay.

23 A. This is more of a branch revenue out here.

24 Q. The branch of the tree; correct?

25 A. Yes.

1 Q. Why don't we take a look at the bottom of the page.
2 And when you talk about SCOSource licensing revenue, as
3 distinct from UnixWare revenue, you describe it as:

4 SCOSource licensing revenue consists of
5 revenue generated from vendor licenses to use our
6 proprietary UNIX System V code as well as IP
7 licenses.

8 Correct?

9 A. Yes.

10 Q. Accurate statement; right?

11 A. Yes.

12 Q. You're licensing the trunk of the tree; correct?

13 A. Correct.

14 Q. And this revenue does include the Sun and Microsoft
15 licenses; right?

16 A. Yes. Yes. Along the way we created a division,
17 and we put as many licensing revenue pieces that we could in
18 the SCOSource division.

19 Q. Let me show you what we've marked and been admitted
20 as Exhibit 313.

21 Mr. McBride, there is your Form 10Q for the period
22 ending July 31st, 2004; correct?

23 A. Yes.

24 Q. And if we go to -- we'll go to your certification
25 on Page 61.

1 Again, on September 14th, 2004, you read the
2 document; correct?

3 A. Yes.

4 Q. And you wouldn't allow someone to place your
5 electronic signature on it unless you read it and believed it
6 to be accurate; correct?

7 A. Correct.

8 Q. Why don't we go to Page 32 -- I'm sorry. We'll
9 start on Page 31.

10 On Page 31 of the Q, it was written:

11 Our product revenue consists of software
12 licenses of our UNIX products primarily OpenServer
13 and UnixWare as well as sales of UNIX related
14 products.

15 Correct?

16 A. Correct.

17 Q. So when you're talking in the financials about what
18 products revenue is, it's software license of OpenServer and
19 UnixWare.

20 A. Everything in software turns on a license. So,
21 yes, it was UNIX products and OpenServer UnixWare.

22 Q. But when the term products revenue is used, it's
23 specific to OpenServer and UnixWare licensing; right?

24 A. That's typically how we do did it, yes.

25 Q. Why don't we turn to the next page, Exhibit 32 --

1 Page 32.

2 So you see on the next page, Mr. McBride, there's a
3 listing there of the UnixWare revenue and OpenServer revenue
4 for the nine months ending July 31st, 2003, and 2004. And
5 neither of those numbers or those line items include the Sun
6 and Microsoft agreements; correct?

7 A. What period of time is this talking about?

8 Q. Well, at the top it's the nine months ending
9 July 31st, 2003, and 2004. So nine months prior to July 31st,
10 2003, and 2004. And there is a line item for UNIX revenue,
11 UnixWare revenue and OpenServer revenue; correct?

12 A. This thing is so dark on the screen I can't even
13 read it. Let me go to the page. Which page are we on here?

14 Q. 32.

15 (Time lapse.)

16 THE WITNESS: Okay. So what's the question then?

17 Q. BY MR. ACKER: When you're talking about these line
18 items up here, UnixWare revenue and UNIX licensing --

19 A. Right.

20 Q. -- that does not include the Sun and Microsoft
21 agreement?

22 A. That is the UnixWare branch revenue up there.
23 Again, the only way you can get System V code license company
24 is through UnixWare.

25 Q. Let's go back to Page 31. Go back one page.

1 In the Q how you describe products revenue is:

2 Our products revenue consists of software
3 licenses of our UNIX products primarily OpenServer
4 and UnixWare.

5 Correct?

6 A. Okay.

7 Q. We go to the next page, Paragraph 32, this UnixWare
8 revenue line does not include the Sun or Microsoft licenses,
9 the revenue from those licenses; right?

10 A. No; because it was trunk revenue, not branch
11 revenue. This is referring to branch revenue.

12 Q. And again, branch revenue is the derivative works
13 including OpenServer and UnixWare; correct?

14 A. Yes.

15 Q. And the trunk is the core UNIX IP; correct?

16 A. I believe you keep trying to shift my words on
17 this. If we go back to the very beginning, I believe what I
18 said very clearly and I said a number of times here is that
19 UnixWare runs throughout the entire tree, okay. It runs
20 throughout the entire tree. So I know you're trying to catch
21 me saying things the wrong way here, but let me come back to
22 the same statement, that UnixWare runs through the entire
23 tree. UnixWare is also a branch. Any time we're talking
24 about the core licensing of the code that's running through
25 the branch, the trunk, it's always going to be through

1 UnixWare licensing.

2 Q. But when you told the SEC in 2003 and 2004 that you
3 had a body of UnixWare licensing, you did not include the Sun
4 and Microsoft agreements in that licensing; correct?

5 A. No. And we didn't put a picture of the tree in
6 there, either. This is not inconsistent with the statement
7 that I'm making.

8 Q. Let me just get it clear. It's true, isn't it,
9 that when you told the SEC and investing public in 2003 and
10 2004 that the Sun and Microsoft licenses were not UnixWare
11 licensing revenue, that was an accurate statement?

12 THE COURT REPORTER: An or inaccurate?

13 MR. ACKER: Inaccurate statement, that it was true.

14 THE WITNESS: Say that again.

15 Q. BY MR. ACKER: Was it true when you told the SEC
16 and the investing public in 2003 and 2004 that the revenue
17 from the Sun and Microsoft agreements was not UnixWare
18 licensing revenue?

19 A. No. It was -- System V was always licensed through
20 UnixWare. UnixWare here is described -- if you want to go
21 back --

22 Q. Well, let me ask you. So the statement was
23 inaccurate?

24 A. I was saying something. Can I finish?

25 Q. Was the statement accurate? I'm asking a simple

1 question. Was it true or false?

2 A. Can I finish my statement?

3 Q. Was it true or false when you told the federal
4 government and the investing public that the Sun and Microsoft
5 licensing revenue was not UnixWare licensing revenue?

6 THE COURT: You can finish your statement. You
7 need to answer his question, but go ahead and finish your
8 statement.

9 THE WITNESS: Okay.

10 If you go back and -- have you listened to the
11 conference call --

12 Q. BY MR. ACKER: The way this works is I ask
13 questions and you answer them. It's unfortunate that way.

14 A. If you listen to the conference call from the time
15 we were doing this licensing, you go back and listen to them.
16 And we were always very clear that the licensing -- a lot of
17 the SEC thing evolves around disclosure, and we've done
18 nothing to not disclose where these are coming from. The code
19 from the licenses, the only which -- you couldn't walk into
20 the company and buy a System V license by itself. There
21 wasn't such a thing on the price list. It would be like
22 walking into Chevrolet and saying, I'd like to buy a Duramax
23 engine. It's not there. You buy a Duramax engine by buying
24 Chevy Silverado, and that's how you get your Duramax.

25 And that's the same way it happens here. We were

1 always very clear on that. This is not deceiving the
2 investing public. I know where you're trying to go with it.
3 But the statements that I'm making are not inconsistent with
4 our licensing practices.

5 Q. And I'd just like an answer to the question.

6 A. What's the question?

7 Q. Is it true when you told the investing public in
8 2003 and 2004 that the Sun and Microsoft revenue was not
9 UnixWare licensing revenue?

10 A. We didn't say it was not UnixWare revenue.

11 Q. Well, you have a list of what UnixWare revenue is
12 in the Q; correct?

13 A. These were UnixWare branch products.

14 Q. Let me finish.

15 You have a list of what UnixWare is in the Q;
16 correct? There's a line in there that includes UnixWare
17 revenue; right?

18 A. The UnixWare branch revenue is what we're talking
19 about.

20 Q. And it doesn't include the Sun and Microsoft
21 licenses; right?

22 A. They were down in the licensing part of SCOSource,
23 and the way you got that was through UnixWare.

24 Q. But if you go back to the prior page, go back.

25 When you describe what is included in UnixWare licensing and

1 your products revenue, that product line that does not include
2 Sun and Microsoft, it's the software license of our UNIX
3 products including OpenServer and UNIX and UnixWare; correct?

4 A. And this is referring to the branch revenue. We
5 had the System V revenue that was manifested in a UnixWare
6 license that was part of that, as well. The investing public
7 looked at UnixWare, when you say UnixWare to our investors,
8 what they think is what's coming out of the UnixWare product
9 line, okay. We were trying to -- we were not trying to play
10 trick plays with legalisms here with where you're trying to go
11 with. We're trying to inform the investing public they know
12 what our UnixWare product is. And the fact that we use
13 UnixWare as the wrapper to sell a System V license is not
14 confusing to our investors. It might be confusing to you, but
15 it's not to our investors.

16 Q. Simple question. In your Q, you said that the
17 products revenue included UnixWare licensing revenue; correct?

18 A. Say that again.

19 Q. The products revenue in your Q includes UnixWare
20 licensing revenue; correct?

21 A. Which means it was a product. It was a branch.

22 Q. And that did not include, that line item from
23 products revenue did not include the Sun and Microsoft
24 revenue; correct?

25 A. No, it did not.

1 Q. Mr. McBride, with your approval SCO filed this
2 lawsuit against Novell alleging slander of title; correct?

3 A. Correct.

4 Q. And the basis for that claim was that Novell
5 allegedly slandered SCO's claim to ownership of the copyrights
6 for the UNIX System V software; correct?

7 A. Yes.

8 Q. And SCO claimed that Novell's actions in
9 challenging SCO's ownership of the UNIX System V software cost
10 SCO hundreds of millions of dollars in damages; correct?

11 A. Correct.

12 Q. And the basis for that hundreds of millions of
13 dollars of damages claimed that Novell's actions harmed or
14 destroyed SCO's SCOSource licensing program; right?

15 A. Yes. That was a major, major factor.

16 Q. But it's true, isn't it, that the only copyrights
17 that Novell have claimed ownership of are the copyrights of
18 the software that were in existence before the 1995 APA;
19 correct?

20 A. They have filed copyrights that step all over the
21 top of our UNIX copyrights, the foundation of our SCOSource
22 program.

23 Q. But the copyrights that Novell has claimed
24 ownership to existed prior to the 1995 APA?

25 A. They have claimed copyright ownership to the

1 copyrights that in the asset purchase agreement, if you go to
2 the included assets, says, SCO is hereby transferred all
3 rights and ownership to all copies of UNIX and UnixWare. It
4 doesn't say Novell gets all the previous versions and SCO gets
5 the latter versions. It says in the first part of the
6 included assets of the asset purchase agreement, included in
7 the asset list is all copies of UNIX and UnixWare and all
8 rights and ownership of UNIX and UnixWare. There is nowhere
9 in there --

10 Q. I wasn't asking about that. All I was asking you,
11 isn't it true that the basis for your slander of title claim
12 is that Novell claimed ownership to software, but it only
13 claimed ownership to software that existed prior to the APA;
14 correct?

15 A. That's not -- they have claimed -- well, the way
16 you're dicing it, I would say that's correct. But it steps on
17 a number of copyrights we believe we have ownership rights to.

18 Q. And Novell has never claimed copyrights to SCO
19 produced UnixWare created after the APA; correct?

20 A. They have claimed ownership to copyrights that are
21 a major part of UnixWare. They sold us -- they said to us in
22 1995, you go to UnixWare. At that point in time, System V has
23 gone through a number of iterations. The version of System V
24 in 1995 was a thing called System V Release 5. System V
25 Release 5 is also known as UnixWare.

1 So there's an evolution, System V Release 1, 2, 3,
2 4, 5. Each time this code base gets broader and deeper. What
3 Novell did is they told us in 1995, they didn't just tell us,
4 they told all of their customers that they had sold UNIX and
5 their interest in UNIX to SCO. They sent out letters to
6 Prentice Hall, they sent a letter to Prentice Hall and dozens
7 of other companies that said in part, we have sold our
8 interest and our ownership in UNIX and UnixWare to the
9 Santa Cruz Operation. It makes immeasurably more sense for
10 you to be dealing with the owners of UNIX and UnixWare than
11 us. And so here's their numbers. And Novell signed this.
12 SCO signed it; Novell signed it.

13 Then it lists, in this Prentice Hall letter that
14 goes out in 1996, it lists numerous versions of what Novell
15 said to the customers, to Prentice Hall in this case, was
16 transferred. It was sold. And it lists all of the things
17 that your client went out and filed copyrights on, not in '95.
18 Why didn't they do it in '95? Why didn't they do it in '96?
19 '97? Why didn't they do it in '98 when we had a licensing
20 deal going on with Monterey or IBM. Maybe in 2001 when SCO
21 transferred the company to a new company called Caldera. They
22 could have said something then.

23 They only did it after we filed suit against IBM in
24 2003 and IBM paid Novell \$50 million to come and work with
25 them. And that copyright ownership letter that Novell sent

1 out to Prentice Hall could not be more clear that SCO is the
2 owner of those products. And ownership in my mind and in the
3 APA says that it includes all rights and ownership.

4 Q. And the products we're talking about are products
5 that were in existence before 1995; correct?

6 A. Part of them, yes. Part of them are subsequent
7 versions.

8 Q. So because of this claim that SCO was damaged for
9 hundreds of millions of dollars by Novell's actions, there
10 must be significant value to that software that existed before
11 1995; correct?

12 A. Again, what you're doing is taking pre 1995
13 technology called System V, and up to that point we've had
14 System V Release 1, 2, 3, 4. And in '95, Novell sells to SCO
15 System V Release 5 and calls it UnixWare. Now they're trying
16 to recreate the playing field. The business people at Novell
17 are not doing this. The business people 100 percent line up
18 with our story. There's a couple of attorneys coming in and
19 trying to recreate the story that they own the previous
20 copyrights. But yet, that contradicts the proposition that
21 our company acquired UnixWare and UNIX and all the rights that
22 go with that in 1995.

23 And so what Novell would have you believe is that
24 all of the money, the 100-plus million dollars that we spent
25 and paid to get rights to all of the versions of UNIX are now

1 stripped away. And all we have is what we created after that.

2 Q. And because --

3 A. It's incredible that they even made that argument,
4 let alone that it's standing up.

5 Q. And because of those actions, Novell's actions in
6 claiming ownership to these products that existed before 1995,
7 you believe SCO has been damaged in hundreds of millions of
8 dollars?

9 A. Absolutely.

10 MR. ACKER: Nothing else, Your Honor.

11 THE COURT: Thank you.

12 Let's take our first break. We'll be in recess for
13 15 minutes.

14 (Recess.)

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