EXHIBIT 2
AMENDMENT NO 1
TO ASSET PURCHASE AGREEMENT

As of the effective date indicated below, the September 19, 1995 Asset Purchase Agreement (the "Agreement") between Novell, Inc. ("NOVELL") and The Santa Cruz Operation, Inc. ("SCO") is amended in the following respects.

A. In the Recitals, Paragraph A, line 4 is amended to read as follows:

- - other products ("Auxiliary Products") which are directly related to UNIX and UnixWare (collectively, the - -

B In Section 1.1, the following new paragraph (d) is added:

- - (d) Right of First Refusal. The parties agree that, within a reasonable time after the Closing Date, they will enter into a separate agreement whereby Buyer will have a right of first refusal to purchase from Seller (i) all appropriate copies of publications relating to the Business and in the possession, custody or control of Seller's technical library located at its facility in Florham Park, New Jersey and (ii) physical assets, including lab equipment and financial accounting server(s), owned by Seller and used in the Business. Each such item will be valued at net book value as of November 1, 1995. Such right of first refusal shall be exercisable until (1) February 29, 1996 as to the financial accounting server(s) and (2) January 31, 1996 as to all other items. - -

C. In Section 1.2, paragraph (b):

(1) The following clause is added at the beginning of the first sentence ("Buyer agrees ... Section 4.16 hereof"):   - - Except as otherwise provided in paragraph (e) of this Section 1.2. - -

NOVELL-SCO-Proprietary (Restricted)  
Not for Disclosure to Third Parties
(2) Lines 14-15 are amended to read as follows:

- - The amounts of additional royalties to be paid in connection with Buyer’s sale of the UnixWare products are identified in detail in Schedule 1.2(b) hereto. Seller - -

D. Section 1.2(d), is amended in its entirety to read as follows:

- - (d) Asset Transfer and Transfer Taxes. Notwithstanding any other provision of this Agreement, the Assets shall remain the property of Seller until expeditiously delivered to Buyer in the manner and at the locations prescribed as follows in this Section 1.2(d), or as subsequently agreed in writing.

Seller shall deliver and Buyer shall accept source code, object code, related documentation and other software assets described in Schedule 1.1(a) (collectively referred to as “Software Assets”) only at Seller’s facility in Florham Park, New Jersey.

In the event that Seller subsequently discovers Software Assets outside of New Jersey contemplated by this Agreement which have not heretofore been delivered to Buyer in New Jersey, Seller shall consult with Buyer to determine if Seller may destroy such assets in place without delivery to Buyer, or transport them to New Jersey or another location specified by Buyer for delivery to Buyer.

Seller represents that to its knowledge software documentation previously delivered to Buyer for the purpose of due diligence is the property of Seller, and Buyer agrees that it will destroy or return possession to Seller in New Jersey before title passes to Buyer.

Seller and Buyer agree that the license that Seller is entitled to exercise after Closing pursuant to Section 1.6 hereof is a right not sold to Buyer and as such is a right retained by Seller.
Buyer shall pay and promptly discharge when due the entire amount of any and all sales and use taxes ("Sales Taxes") imposed or levied by reason of the sale of the Assets to Buyer. The parties shall cooperate with each other to the extent reasonably requested and legally permitted to minimize any such Sales Taxes. If Seller is obligated to pay any of such Sales Taxes, Buyer shall reimburse Seller on demand for the amount of such payment. --

E. In section 1.2, the following new paragraphs (e) and (f) are added:

- (e) Revenues to be Retained by Buyer. Subject to the last sentence of paragraph (a) of Section 4.16 hereof, Buyer shall be entitled to retain 100% of the following categories of SVRX Royalties collected by Buyer:

(i) fees attributable to stand-alone contracts for maintenance and support of SVRX products listed under Item VI of Schedule 1.1(a) hereof;

(ii) source code right to use fees under existing SVRX Licenses from the licensing of additional CPU's and from the distribution by Buyer of additional source code copies;

(iii) source code right to use fees attributable to new SVRX licenses approved by Seller pursuant to Section 4.16(b) hereof; and

(iv) royalties attributable to the distribution by Buyer and its distributors of binary copies of SVRX products, to the extent such copies are made by or for Buyer pursuant to Buyer's own licenses from Seller acquired before the Closing Date through Software Agreement No. SOFT-000302 and Sublicensing Agreement No. SUB-000302A.
(f) **Monthly Reports.** Within one (1) calendar month following each calendar month in which SVRX Royalties [and royalties from Royalty-Bearing Products as contemplated in Schedule 1.2(b) hereof] are received by Buyer, Buyer shall provide to Seller, in electronic file format, a report detailing all such royalties. Such monthly reports shall be separately broken down by revenue type (i.e., source code right to use fees, gross and net binary per copy fees, and support fees), by product, by customer, by quarterly period by which distribution occurs, and by country (if provided by customer) of distribution. Each such report shall also detail, with respect to the revenues reported, any third party payments attributable to such revenues, broken down by the identity of such third parties and the applicable payments to each. Buyer shall provide Seller with a single point of contact to discuss specific additional revenue and unit information (by customer) which, in Seller’s judgment, are appropriate to supplement such monthly reports. Buyer shall also provide to Seller, on a monthly basis, a report that reconciles monthly revenues reported (and accounts receivable) to cash remittances actually made to Seller by Buyer.

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F. In Section 1.4, line 8 is amended to read as follows:

- - in the loss or diminution thereof: provided, however, that Seller shall, as soon as practicable after the Closing Date and at its own expense.

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G. In Section 1.6, lines 1-2 are amended to read as follows:

- - **1.6 Seller’s Licenses to Assets.** Concurrent with the Closing, Buyer and Seller shall enter into a license agreement providing Seller with a royalty free, perpetual.

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H. In Section 4.13:

(1) In the first paragraph, lines 5-6 are amended to read as follows:

- - is comparable to that offered by Seller. The Benefits Package.
(2) The following new paragraphs are added at the end of the section:

- - For purposes of this Section 4.13, the term "Type 1 employee" means a person who
(1) as of the effective date of this Agreement was employed by Seller in any technical,
business or financial (but not sales) capacity in Seller’s Operating System Division in
Florham Park, New Jersey, Provo, Utah or San Jose, California or otherwise in
connection with the Business and/or the Assets and (2) whose employment with Seller
thereafter terminates under circumstances under which such employee is given severance
benefits from Seller including payment ("Severance Payment") calculated for a
prescribed interval ("Severance Period").

Buyer agrees that it will not knowingly offer employment to, or offer to hire as a
contractor, any Type 1 employee until the Severance Period for such employee is
completed.

In the event that for any reason Buyer offers employment to, or offers to hire as a
contractor, any such employee before the end of the period contemplated in the preceding
sentence, Buyer shall remit to Seller a prorated portion of such Severance Payment
applicable to the period between February 1, 1996 and the date of such offer. Such
remittance shall be made to Seller within ten (10) days after such employee commences
work on behalf of Buyer.

Seller agrees that prior to February 1, 1996, it will provide to Buyer a list of persons who
are Type 1 employees.

Notwithstanding the above and except for normal attrition of previously hired employees,
Buyer agrees not to hire any Type 1 employee for a period of 150 days from February 1,
1996. If Buyer does then Buyer will remit to Seller the full Severance Payment made to
such Type 1 employees. - -
I. In Section 4.16, paragraph (a):

1. The second sentence ("Within 45 days ... preceding quarter") is amended to read as follows:

   - - Within one (1) calendar month following each calendar month in which SVRX royalties (and royalties from Royalty-Bearing Products) are received by Buyer [except for those SVRX Royalties to be retained in their entirety by Buyer pursuant to paragraph (e) of Section 1.2 hereof] Buyer shall remit 100% of all such royalties to Seller or Seller's assignee. Buyer shall also provide to Seller, within six (6) days following the calendar month in which such royalties are received, and estimate of the total amount of such royalties. - -

2. In the last sentence ("In consideration ... SVRX Royalties") the following is added at the end before the period:

   - - together with a remittance sufficient to cover applicable third party payments, (if any) which are attributable to distributions giving rise to such SVRX Royalties (and royalties from Royalty-Bearing Products) and for which Buyer has assumed Seller's obligation of payment to such third party. - -

J. In Section 4.16, paragraph (b), the last sentence ("Buyer shall not ... Merged Product") is amended to read as follows:

   - - Notwithstanding the foregoing, Buyer shall have the right to enter into amendments of the SVRX Licenses (i) as may be incidentally involved through its rights to sell and license UnixWare software or the Merged Product [as such latter term is defined in a separate Operating Agreement between the parties to be effective as of the Closing Date, a copy of which is attached hereto as Exhibit 5.1(c)], or future versions of the Merged Product, or (ii) to allow a licensee under a particular SVRX License to use the source
code of the relevant SVRX product(s) on additional CPU’s or to receive an additional distribution, from Buyer, of such source code. In addition, Buyer shall not, and shall have no right to, enter into new SVRX Licenses except in the situation specified in (i) of the preceding sentence or as otherwise approved in writing in advance by Seller on a case by case basis. - -

K. In Schedule 1.1(a):

1. In Item I:

(i) each occurrence of “UNIX and “UnixWare” is changed to read - - UNIX, UnixWare and Auxiliary Products - -.

(ii) line 3, before “technical” the word “appropriate” is added.

(iii) line 5. before “engineering” the word “appropriate” is deleted.

(iv) in the UNIX Source Code Products listing, the title is changed to “UNIX and UnixWare Source Code Products” and item D is amended to read as follows:

- - The following foreign versions of UnixWare software:

UnixWare 1.0 French
UnixWare 1.0 German
UnixWare 1.0 Italian
UnixWare 1.0 Spanish

UnixWare 1.1 French
UnixWare 1.1 German
UnixWare 1.1 Italian
UnixWare 1.1 Spanish
UnixWare 1.1 Japanese
UnixWare 1.1 Chinese

UnixWare 2.01 French
UnixWare 2.01 German
UnixWare 2.01 Italian
UnixWare 2.01 Spanish
UnixWare 2.01 Japanese

(v) in the Products Under Development listing, the following is added at the end:
    - - F. Amadeus Software - -

(vi) the following new listing is inserted between the Products Under Development listing and the Other Technology listing:

    - - Auxiliary Products

    [as listed in Attachment 1 to this Schedule 1.1(a)] - -

2. The following is added at the end of Item III:

    - - N. Agreements for development and licensing of Amadeus Software. - -

3. Item IV is changed to read:

    - - All master copies of UNIX, UnixWare and Auxiliary Software owned by Seller, except as retained by Seller in connection with seller’s licenses specified in Section 1.6 hereof. - -
4. In Item VI:

(i) The first line is amended in its entirety to read as follows:

- - All contracts relating to the SVRX Licenses and Auxiliary Product Licenses (collectively "SVRX Licenses") listed below: - -

(ii) The following is added to the list of SVRX Licenses:

- - Auxiliary Products - -

L. In Schedule 1.1(b), Item VII is amended to read as follows:

- - VII. All accounts receivable or rights to payment concerning the Assets arising prior to the Closing Date, subject to appropriate payments to Buyer in several situations involving (a) prepayments received by Seller prior to the Closing Date under its customer agreements which cover orders for licenses to and/or support for UnixWare products that remain unfulfilled as of the Closing Date or (b) any other rights to payments which accrued to Seller prior to the Closing Date under such agreements for such unfulfilled orders for UnixWare Products. Such situations are described in Attachment 1 to this Schedule 1.1(b). The parties agree to adopt more detailed procedures, where appropriate, to deal with such payments in each of such situations within ninety (90) days after the Closing Date.

M. In Schedule 1.2(b), paragraph (b), the first sentence is amended to read as follows:

- - (b) Amount of Royalties. Attachment 1 to this Schedule 1.2(b) represents Seller's annual forecast, as of the Closing Date, of the potential estimated market for units of Unix System V. UnixWare. Eiger. MXU and White Box software (the "Plan" or "Unit Plan"). - -
N. In Exhibit 5.1(c) paragraph (b) is rewritten in its entirety as follows:

- Commencing November 1, 1995. Seller shall be responsible for bearing a certain amount of the reasonable, auditable and fully burdened costs incurred on a combined basis by Buyer and Seller for the completion of the GA version of the Eiger product, as follows:

  (i) 100% of such costs incurred by SELLER from November 1, 1995 up to the Closing Date (estimated to be about $2,600,000);

  (ii) 50% of the first $5,000,000 of such costs incurred by both Companies after the Closing Date;

  (iii) 25% of the next $10,000,000 of such costs incurred by both Companies after the Closing Date.

Buyer and Seller will separately maintain records of such costs incurred. On a calendar month basis after the Closing Date, Buyer and Seller will exchange information as to such development costs incurred in that month. Each party ("first party") will render payment to the other party for any amounts such first party is responsible for which are in excess of all amounts such first party has incurred. Each such payment shall be remitted by such first party within thirty (30) days after receipt from the other party of an invoice for such excess amount.

O. Attachments A, B and C to this Amendment No. 1 are incorporated as Attachment 1 to Schedule 1.1(a). Attachment 1 to Schedule 1.1(b), and Attachment 1 to Schedule 1.2(b), respectively.

All other terms and conditions of the Agreement shall remain in full force and effect.
The parties have executed this Amendment No. 1 through their duly authorized representatives on the respective dates indicated below. The effective date of this Amendment No. 1 shall be the later of such respective dates.

THE SANTA CRUZ OPERATION, INC.

By: [Signature]
Printed Name: Alok Mohan
Title: Chief Executive Officer
Date: December 6, 1995

By: [Signature]
Printed Name: R. Duff Thompson
Title: Senior Vice President - Corporate Development
Date: December 6, 1995
ATTACHMENT A

Listing of Auxiliary Products

Open Network Computing
386 Implementation of UNIX System V Release 4
Multi-National Language Supplement
386 Implementation of UNIX System V Release 4
Multi-National Language Supplement
386 Implementation of UNIX System V Release 4
Multi-National Language Supplement
Application Source Verifier Release 2.0
Artus
C Compilation System for Motorola 68000
C Optimized Compilation System for UNIX System V
386/486
C++ Documents
C++ Language System Release 2.1
C++ Language System Release 3.0 and 3.0.1
C++ Language System Release 3.0.2
C++ Language System Release 3.0.3
C++ Object Interface Library Release 1.1
C++ Standard Components Release 2.0
C++ Standard Components Release 2.0.1
C++ Standard Components Release 3.0
C++ Standard Libraries Release 2.0
C++ Standard Libraries Release 3.0
C++ Standard Library Extension Release 1.0
C++LS 2.0
C++Translator
CFRONT Release 1.2
Chinese System Messages Implementation of UNIX
System V Release 4 System Messages
Distributed Manager/Framework & Host Manager
Release 1.0
Distributed Manager/Framework & Host Manager
Technology Licensing Program 1
Distributed Manager/Framework & Host Manager U.I.
Early Access
Distributed Manager/Print Manager Release 1.0
Distributed Manager/Print Manager Technology
Licensing Program 1
Distributed Manager/Print Manager Technology
Licensing Program 1
Distributed Manager/Print Manager U.I. Early Access
DM/SM-TLP1
Documentation Reproduction Provision - UNIX System V Handbook
Documentation Reproduction Provision - UNIX System V Programming Books
Documentation Reproduction Provision - UNIX System V Reference Books
Documentation Reproduction Provision - UNIX System V User_s and Administrator_s Books
European Supplement Release 3.2
European System Messages Release 3.2
French Application Environment1.0/3b2
French System Messages Implementation of UNIX System V Release 4 System Messages
German Application Environment
German System Messages Implementation of UNIX System V Release 4 System Messages
German System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages
Hindi System Messages Implementation of UNIX System V Release 4 System Messages
Intel386 Microprocessor Implementation of VERITAS File System (VxFS) Release 1.0
Intel386 Microprocessor Implementation of VERITAS Visual Administrator Release 1.01
Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.01
Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.1
Intel386 Microprocessor Implementation of VERITAS Volume Manager (VxVM) Release 1.1.1
Italian System Messages Implementation of UNIX System V Release 4.1 Enhanced Security System Messages
Italian System Messages Implementation Of UNIX System V Release 4 System Messages
Japanese Application Environment I/O Rel 1.0
Japanese Application Environment Release 2.0
Japanese Application Environment Release 2.0
Japanese Application Environment Release 2.1
Japanese Environment for SVR4.2
Japanese Extension Implementation of UNIX System V
Release 4.2
Japanese I/O Release 1.0
Japanese System Messages Implementation of UNIX
System V Release 4 System Messages
Japanese System Messages Implementation of UNIX
System V Release 4.1 Enhanced Security System Messages
Japanese System Messages Release 3.2
Korean System Messages Implementation of UNIX
System V Release 4 System Messages
Optimizing C Compiler for Intel, Release 3.0
Spanish System Messages Implementation of UNIX
System V Release 4 System Messages
Spanish System Messages Implementation of UNIX
System V Release 4.1 Enhanced Security System Messages
System V Release 2.0 Machine Readable Documentation
System V Release 3.0 Documentation Reproduction Provision
System V Release 3.1 Documentation Reproduction Provision
System V Release 3.2 Documentation Reproduction Provision
System V Verification Suite Release 2
System V Verification Suite Release 3
System V Verification Suite Release 4
UNIX System V French System Messages Release 3.2
UNIX System V German System Messages Release 3.2
UNIX System V Release 1.0 for 386 Multi-National Language Supplement
UNIX System V Release 1.0 for Intel 386 Multi-National Language Supplement
UNIX System V Release 3.2 386 Doc. Reproduction Provision
UNIX System V Release 3.2 for Intel 386 Multi-National Language Supplement
UNIX System V Release 3.2 for Intel 386 Multi-National Language Supplement
UNIX System V Release 3.2 Multi-National Language
Supplement
UNIX System V Release 4 European Language
Supplement
UNIX System V Release 4 STREAMS-Based Korean
Input/Output Subsystem
UNIX System V Release 4.0 386 Doc. Reproduction
Provision
UNIX System V Release 4.0 3B2 Doc. Reproduction
Provision
UNIX System V Release 4.0 i860 Doc. Reproduction
Provision
UNIX System V Release 4.2 European Language
Supplement, Version 1
UNIX System V Release 4.2 MP Japanese Extension
UNIX Time Sharing Operating System Phototypesetter
and C Compiler Edition #7
USL Standard C Development Environment for the 860
Implementation of UNIX System V Release 4.0
Veritas File System (VxFS) Release 1.3 for UNIX
System V Release 4.2
XWIN Graphical Windowing System Release 3.0
XWIN Graphical Windowing System Release 4.0
XWIN Graphical Windowing System Release 4.0i

ATTACHMENT B

Treatment of Certain Prepayments and Rights

(centered) (9 Payment Specified in Item VII of Schedule 1.1(b)

Situation 1 - where the Seller customer contract (other than in Situation 3) involves a prepayment
and/or an accrued right to payment (collectively “prepayment”) that applies to a mix of
UnixWare and non-UnixWare products.

Seller will send a notice requiring the customer to specify in writing (i) whether it wants any of
the prepayment to be allocated to the UnixWare products and (ii) if so, how much of such
prepayment should be so allocated. The notice shall state that if the customer does not respond
within 30 days after the date of transmission by Seller, none of such prepayment shall apply to the UnixWare products. The notice shall also specify that any future prepayment under the contract in question will not apply to UnixWare products, and that orders for UnixWare products after the prepayment allocation is used up must be directed to Buyer.

If the customer elects a UnixWare allocation of $100,000 or more, or makes a UnixWare allocation of an unspecified amount, Buyer will fulfill all of such customer's orders of UnixWare products against the unused prepayment allocation (or prepayment, if no allocation is made). Buyer will receive from Seller a payment reflecting a pro-rated portion of such prepayment allocation (or such prepayment). Such payment shall be deemed to be royalties received by Buyer for the UnixWare products in question.

If the customer allocates less than $100,000 of the prepayment to UnixWare products in response to such notice, Buyer will fulfill all of such customer's orders for UnixWare products against the prepayment and will receive from Seller its actual and reasonable costs (including third party royalties assumed by Buyer under this Agreement) of such fulfillment plus a markup of five percent (5%).

**Situation 2** - where Seller's customer's contract (other than in Situation 3) calls for prepayments applicable to UnixWare products only.

If the prepayment is $100,000 or more, the roles of Seller and Buyer set forth in Situation 1 for an allocation of $100,000 or more shall apply.

If the prepayment is less than $100,000, the roles of Seller and Buyer set forth in Situation 1 for an allocation of less than $100,000 shall apply.

**Situation 3** - Seller's customer contracts with Siemens-Rolm, TMAC, Microport, Tatung and Sysorex.

These contracts involve prepayments that may apply either to a mix of UnixWare and non-UnixWare products (TMAC and Sysorex) or to UnixWare products alone. Irrespective of the type of allocation, the roles of Seller and Buyer set forth for a UnixWare allocation of $100,000 or greater shall apply.
For a period of up to sixty (60) days after the Closing Date Buyer and Seller will cooperate to attempt to identify additional ones of Seller's customers who have prepayments which could be allocated to UnixWare products in the amount of $100,000 or more. For each of such additional customers so identified, the roles of Buyer and Seller shall be as mutually agreed.
ATTACHMENT C

Unit Plan

Table A below represents Seller’s forecast of the rates of shipments, through all appropriate channels, of units of the following offerings of Unix System V, UnixWare, Eiger, MXU and White Box software:

◊ Single user and multi-user versions
◊ Upgrades to existing units
◊ Processor upgrades
◊ Other components, specifically:
  • Software developers kit
  • OnLine Data Manager
  • Locus Merge
◊ All Units which Buyer receives payment for, directly or indirectly

Table A
Units (in thousands)

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<thead>
<tr>
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<td>Total Unix Software Units</td>
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EXHIBIT 3
BILL OF SALE

Reference hereby is made to that certain Asset Purchase Agreement by and between The Santa Cruz Operation, Inc. and Novell, Inc. dated as of September 19, 1995, as amended by Amendment No. 1 to Asset Purchase Agreement dated as of December 6, 1995 (together, the "Agreement"). Capitalized terms used in this Bill of Sale and not otherwise defined shall have the meanings ascribed to such terms in the Agreement.

In accordance with Article 1.1(a) of the Agreement, Seller, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby transfer, convey, sell, assign and deliver to Buyer, without recourse, representation or warranty except as otherwise expressly provided in the Agreement, all of the Assets. Excepted from the transfer of Assets pursuant to the preceding sentence are the rights reserved by Seller pursuant to that certain Technology License Agreement between Seller and Buyer dated as of December 6, 1995.

Seller does not sell to Buyer and Buyer does not purchase from Seller any interest in any of Seller's assets other than the Assets.

This Bill of Sale shall be binding upon the successors and assigns of Seller and shall inure to the benefit of the successors and assigns of Buyer as permitted under the Agreement.

It is acknowledged and agreed that this Bill of Sale is intended only to document the sale and assignment of the Assets to Buyer, and that the Agreement is the exclusive source of the agreement and understanding between Seller and Buyer respecting the Assets. Nothing in this Bill of Sale shall limit, expand or otherwise affect any of the representations, warranties, agreements or covenants contained in the Agreement. If any provision of this Bill of Sale is construed to conflict with any provision of the Agreement, the provision of the Agreement shall control.

IN WITNESS WHEREOF, Seller has cause this Bill of Sale to be duly executed as of the 6th day of December, 1995.

NOVELL, INC.

By: 
Title: Senior Vice President - Corporate Development

Acknowledged this 6th day of December, 1995:

THE SANTA CRUZ OPERATION, INC.

By: 
Title: Chief Executive Officer
EXHIBIT 4
TECHNOLOGY LICENSE AGREEMENT

This Agreement is made between Novell, Inc. ("NOVELL"), a Delaware corporation, and The Santa Cruz Operation, Inc. ("SCO"), a California corporation. The effective date of this Agreement shall be the Closing Date of the Asset Purchase Agreement.

WHEREAS, pursuant to the Asset Purchase Agreement, NOVELL shall be entitled to retain and to exercise, after the Closing Date, certain licenses for Licensed Technology, including related documentation and support.

NOW, THEREFORE, for mutual consideration, the adequacy and sufficiency of which are acknowledged, the parties agrees as follows.

I. DEFINITIONS

For purposes of this Agreement:

"Asset Purchase Agreement" means the September 19, 1995 Asset Purchase Agreement between NOVELL and SCO, as amended by Amendment No. 1 to the Asset Purchase Agreement dated as of December 6, 1995.

"Assigned Vendor Agreement" means an agreement (i) originally entered into by NOVELL, or a predecessor in interest of NOVELL, for the acquisition of software to be incorporated into or bundled with Licensed Technology, and (ii) imposing payment obligations on NOVELL that were assumed by SCO under the Asset Purchase Agreement.
The terms "Assets", "Change of Control", "Closing Date", "Licensed Technology" and "Transitional Contracts" shall have the respective meanings attributed to such terms in the Asset Purchase Agreement.

II. NOVELL'S RETAINED LICENSES

A. Effective upon the Closing Date and in connection with the transfer of the Assets by NOVELL to SCO pursuant to the Asset Purchase Agreement, NOVELL hereby retains, with the consent of SCO and, shall have a non-exclusive, non-terminable, worldwide, fee-free license to

(1) use, reproduce and modify, and authorize its customers to use, reproduce and modify, Licensed Technology (including related documentation) in their respective internal business operations; and

(2) subject to paragraphs B and C of this Section II, to sublicense and distribute, and authorize its customers to sublicense and distribute, such Licensed Technology and modifications thereof, in source and binary form; provided, however, that (i) such technology and modifications may be sublicensed and/or distributed by NOVELL solely as part of a bundled or integrated offering ("Composite Offering"); (ii) such Composite Offering shall not be directly competitive with core application server offerings of SCO, and (iii) the Licensed Technology shall not constitute a primary portion of the value of such Composite Offering. SCO understands and acknowledges that such restrictions on sublicenseing and/or distribution shall not affect any rights specifically retained by NOVELL under the Asset Purchase Agreement, including but not limited to rights under Transitional Contracts.

B. In the event of a Change of Control of SCO, and commencing with the effective date of such Change of Control, the proviso in subparagraph IIA(2) setting forth

NOVELL-SCO -Proprietary (Restricted)
Not for disclosure to third parties
- 2 -
restrictions on the sublicense and/or distribution of Licensed Technology and modifications thereof shall cease to exist.

C. In the event of a Change of Control of NOVELL, and commencing with the effective date of such Change of Control, the term “Composite Offering” in the proviso of subparagraph IIA(2) above shall be restricted to bundled and integrated offerings of NOVELL or its customers, as the case may be, that have been developed or substantially developed as of the effective date of such Change of Control.

III. OWNERSHIP

As between NOVELL and SCO:

(1) Ownership of Licensed Technology shall reside in SCO.

(2) Ownership of any modifications made to Licensed Technology pursuant to the licenses specified in Section II above shall reside in NOVELL.

IV. REIMBURSEMENT TO SCO FOR CERTAIN PAYMENT OBLIGATIONS

In the event that the exercise of any of NOVELL’s licenses specified in Section II above results in an obligation on the part of SCO to remit any payment to a third party under an Assigned Vendor Agreement, NOVELL shall reimburse SCO for the amount of any such payment remitted by SCO to such third party.

V. SUPPORT
With respect to any version or load of the "Eiger" product forming part of the Licensed Technology, SCO shall provide to NOVELL a reasonable degree of support to assist NOVELL's licensing activities pursuant to Section II above.

VI DISCLAIEMER OF WARRANTY

THE PARTIES AGREE THAT LICENSED TECHNOLOGY IS PROVIDED “AS IS”. ANY AND ALL WARRANTIES OF ANY KIND WHATSOEVER WITH RESPECT TO LICENSED TECHNOLOGY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AGAINST INFRINGEMENT OF ANY THIRD PARTY PROPRIETARY RIGHT, ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

VII ASSIGNMENT

A. Neither party hereto may assign this Agreement or any of its rights hereunder to any other person or entity without the prior written consent of the other party; provided, however, that either party may assign its rights and delegate its obligations under this Agreement to its corporate parent, another subsidiary of such parent, or a third party transferee of substantially the entire portion of such party’s business to which this agreement relates.

B. Subject to Paragraph A of this Section, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of NOVELL and SCO and is not intended to confer upon any other person any rights or remedies hereunder.

VIII ENTIRE AGREEMENT

NOVELL-SOC -Proprietary (Restricted)  
Not for disclosure to third parties  
- 4 -
This Agreement and the Asset Purchase Agreement constitute the entire understanding between the parties with respect to its subject matter, and supersede all prior understandings, both written and oral, between them relating to such subject matter.

IX. NO WAIVER

No waiver, modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both parties.

X. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the substantive laws of California.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives on the respective dates indicated below.

NOVELL INC.

By: [Signature]
Printed Name: R. Duff Thompson
Title: Senior Vice President - Corporate Development
Date: December 6, 1995

THE SANTA CRUZ OPERATION, INC.

By: [Signature]
Printed Name: Alok Mohan
Title: Chief Executive Officer
Date: December 6, 1995
EXHIBIT 5
AMENDMENT No. 2
TO THE ASSET PURCHASE AGREEMENT

As of the 12th day of November, 1996, the September 19, 1995 Asset Purchase Agreement (the "Agreement") between Novell, Inc. ("Novell") and The Santa Cruz Operation, Inc. ("SCO") is amended in the following respects.

A. With respect to Schedule 1.1(b) of the Agreement, titled "Excluded Assets", Section V, Subsection A shall be revised to read:

All copyrights and trademarks, except for the copyrights and trademarks owned by Novell as of the date of the Agreement required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies. However, in no event shall Novell be liable to SCO for any claim brought by any third party pertaining to said copyrights and trademarks.

B. Except as provided in Section C below, and notwithstanding the provisions of Article 4.16, Sections (b) and (c) of the Agreement, any potential transaction with an SVRX licensee which concerns a buy-out of any such licensee's royalty obligations shall be managed as follows:

1. Should either party become aware of any such potential transaction, it will immediately notify the other in writing.

2. Any meetings and/or negotiations with the licensee will be attended by both parties, unless agreed otherwise. Novell's participation will be by personnel who are engaged in corporate business development.

3. Any written proposal to be presented to the licensee, including drafts and final versions of any proposed amendments to the SVRX licenses, will be consented to by both parties prior to its delivery to the licensee, unless agreed otherwise.

4. Prior to either parties' unilateral determination as to the suitability of any potential buy-out transaction, the parties will meet face to face and analyze the potential merits and disadvantages of the transaction. No such transaction will be concluded unless the execution copy of the amendment is consented to in writing by both parties, and either party will have the unilateral right to withhold its consent should it judge, for any reason whatsoever, the transaction to be contrary to its economic interests and/or its business plans and strategy.

5. This Amendment does not give Novell the right to increase any SVRX licensee's rights to SVRX source code, nor does it give Novell the right to grant new SVRX source code licenses. In addition, Novell may not prevent SCO from exercising its rights with respect to SVRX source code in accordance with the Agreement.

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6. The parties agree that no member of Novell’s sales force will receive a bonus, commission, quota attainment credit, or other type of sales incentive as a result of the buy-out of an SVRX license.

C. Novell may execute a buy-out with a licensee without any approval or involvement of SCO, and will no longer be bound by any of the requirements stated in Section B. above, if: (i) SCO ceases to actively and aggressively market SCO’s UNIX platforms; or (ii) upon a change of control of SCO as stated in schedule 6.3(g) of the Agreement.

D. Novell and SCO agree to indemnify and hold harmless the other from and against any and all losses, liabilities, judgments, and costs incurred (“Liability”) if either causes the other to incur Liability under Section 10 of Amendment No. X to Software Agreement SOFT-00015 as amended, Sublicensing Agreement SUB-00015A as amended, Software Agreement SOFT-00015 Supplement No. 170 as amended, and Substitution Agreement XFER-00015B (“Amendment No. X”).

In witness whereof, the parties have executed this Amendment No. 2 to be signed by their duly authorized representatives as of the date first written above.

THE SANTA CRUZ OPERATION, INC.

By: ________________________________
Name: ________________________________
Title: ________________________________

NOVELL, INC.

By: ________________________________
Name: ________________________________
Title: ________________________________
6. The parties agree that no member of Novell's sales force will receive a bonus, commission, quota attainment credit, or other type of sales incentive as a result of the buy-out of an SVRX license.

C. Novell may execute a buy-out with a licensee without any approval or involvement of SCO, and will no longer be bound by any of the requirements stated in Section B. above, if: (i) SCO ceases to actively and aggressively market SCO's UNIX platforms; or (ii) upon a change of control of SCO as stated in schedule 6.3(g) of the Agreement.

D. Novell and SCO agree to indemnify and hold harmless the other from and against any and all losses, liabilities, judgments, and costs incurred ("Liability") if either causes the other to incur Liability under Section 10 of Amendment No. X to Software Agreement SOFT-00015 as amended, Sublicensing Agreement SUB-00015A as amended, Software Agreement SOFT-00015 Supplement No. 170 as amended, and Substitution Agreement XFER-00015B ("Amendment No. X").

In witness whereof, the parties have executed this Amendment No. 2 to be signed by their duly authorized representatives as of the date first written above.

THE SANTA CRUZ OPERATION, INC. NOVELL, INC.

By: [Signature]

Name: Stephen M. Sublett

Title: Vice President, General Counsel

By: [Signature]

Name: 

Title: 

G:\LEGAL\TRANSFER\SCO\AMEND2 1-0
EXHIBIT 6
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff and
Counterclaim Defendant,

vs.                                                  C.A. No. 2:04CV00139

NOVELL, INC.,

Defendant and
Counterclaim Plaintiff.

Deposition of

ALOK MOHAN

February 23, 2007

Reported by
Katherine E. Lauster
CSR 1894

SHARI MOSS & ASSOCIATES
Certified Shorthand Reporters
877 Cowan Road, Suite A
Burlingame, California  94010-1204
(415) 402-0004
(650) 692-8900
FAX:  (415) 402-0005
Q. Good morning, Mr. Mohan.

EXAMINATION BY MR. BRAKEBILL

THE VIDEOGRAPHER: Please begin.

ALOK MOHAN, please swear in the witness?

THE VIDEOGRAPHER: Would the reporter Schiller & Flexner.

LAURA JOHNSON: Laura Johnson, Boies, Schiller & Flexner.

THE VIDEOGRAPHER: Would the reporter identify name Kathy Lauster of Shari Moss and Associates.

THE VIDEOGRAPHER: The court reporter's operator today is Vincent Spanier, contracted by Morrison & Foerster.

Today's date is February 23rd, 2007. The time on the video monitor is 9:42. The video tape number 1 of Volume 1 in the deposition of Alok Mohan is 2:04CV00139.

Today's date is February 23rd, 2007. The Court of Utah, Central Division. The Case Number is 2:04-cv-00139-DAK-BCW versus Novell, Inc. in the United States District Court for the District of Utah.

Q. Mr. Mohan, we're handing you a document for identification.

By MR. BRAKEBILL:

A. I could read it.

Q. Are you aware of any communications of Shari Moss and Associates with Oregon State University, a plaintiff in this case?

A. Yes.

Q. And do you recall having characterized your involvement in the Novell/Santa Cruz transaction as at a high level?

A. I've given a declaration, yes.

Q. And do you recall having characterized your involvement in the Novell/Santa Cruz transaction as at the high level?

A. I could read it.

MR. BRAKEBILL: To save some time, let me just mark as -- as a new exhibit -- I believe, Exhibit 69.

Q. Were you also a member of the Board of Directors?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz deal was only at a high level?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz transaction was only at a high level?

A. Yes.

Q. Were you also a member of the Board of Directors?

A. I was the CEO.

Q. And would it be fair -- what would -- were you aware that there was a contract relating to the transaction between Novell and Santa Cruz?

A. I was the CEO.

Q. Were you also a member of the Board of Directors?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz transaction was only at a high level?

A. Yes.

Q. Were you also a member of the Board of Directors?

A. I was the CEO.

Q. And would it be fair -- what would -- were you aware that there was a contract relating to the transaction between Novell and Santa Cruz?

A. I was the CEO.

Q. Were you also a member of the Board of Directors?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz transaction was only at a high level?

A. Yes.

Q. Were you also a member of the Board of Directors?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz transaction was only at a high level?

A. Yes.

Q. Were you also a member of the Board of Directors?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz transaction was only at a high level?

A. Yes.

Q. Were you also a member of the Board of Directors?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz transaction was only at a high level?

A. Yes.

Q. Were you also a member of the Board of Directors?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz transaction was only at a high level?

A. Yes.

Q. Were you also a member of the Board of Directors?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz transaction was only at a high level?

A. Yes.

Q. Were you also a member of the Board of Directors?

A. Yes.

Q. Would it be fair to say that your involvement in the Novell/Santa Cruz transaction was only at a high level?

A. Yes.
A. I assume, yes.
Q. And I'm trying to find out the basis of your belief.

13:45:35 3
(Mr. Tibbitts entered the deposition room.)

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A. That's right. That's my understanding.
MR. NORMAND: Objection to form.

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THE WITNESS: My belief is that we bought the business, except for the revenue stream. And when we bought the business everything came with it.

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MR. NORMAND: Objection to form.

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Q. Where --
A. We bought it.
Q. What is the basis of your opinion that Santa Cruz got the Unix business?
A. That's right. That's my understanding.

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THE WITNESS: My belief is that we bought the business, except for the revenue stream. And when we bought the business everything came with it.

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13:48:47 25

A. I can -- I can start going through line item by line item, but I think that APA does talk about the business and that we acquired the business. And when we bought the business everything came with it.

13:47:10 2

BY MR. BRAKEBILL:
Q. And what is the basis for your understanding that Santa Cruz got the Unix copyrights?
MR. NORMAND: Objection to form.
THE WITNESS: I'm being very specific, and you're asking me about copyrights. I'm talking about the business. I believe we bought the business, and the APA states that too. We bought the business, and in that business everything belongs in that business, that's ours.

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BY MR. BRAKEBILL:
Q. Where --
A. We bought it.
Q. What is the basis of your opinion that Santa Cruz got the Unix business?
A. That's right. That's my understanding.

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BY MR. BRAKEBILL:
Q. Do you need to read -- do you need to read this document?
MR. NORMAND: How would he not have to read the document in order to find any provision that supports his view, Ken? That was your question. How could he not read the document? I'm asking you a question. How could he not read the document to do that?

MR. BRAKEBILL: I don't think you need to elevate your voice.
MR. NORMAND: I think I do, because we've been wasting time for two and a half hours, and now you ask this question and express incredulity over
16:29:23 1   BY MR. NORMAND:
16:29:25 2   Q.   The press release states, on page 2, in
16:29:30 3   the first sentence of the second paragraph, quote:
16:29:33 4   According to the terms of the agreement,
16:29:35 5   SCO will acquire Novell's UnixWare
16:29:37 6   business and UNIX intellectual property,
16:29:40 7   end quote.
16:29:41 8   Do you see that language?
16:29:43 9   A.   Yes.
16:29:43 10  Q.   Does that language accurately reflect
16:29:45 11  your understanding of the transaction?
16:29:47 12  A.   This language is consistent with what
16:29:50 13  I've been saying today about we bought the
16:29:52 14  business.  We bought UnixWare and Unix intellectual
16:29:57 15  property, we bought the business, and that's what I
16:29:59 16  thought we were buying, and I still believe that's
16:30:03 17  what we bought.
16:30:04 18  Q.   Did you have occasion in the last several
16:30:06 19  years to become aware of -- of Novell's public
16:30:11 20  claim that it had not sold the Unix copyrights to
16:30:14 21  Santa Cruz?
16:30:15 22  A.   I had seen that, yes, somewhere.
16:30:18 23  Q.   What was your reaction when you saw that?
16:30:21 24  A.   I was absolutely surprised, because, as I
16:30:24 25  said, again, I've said I thought we had bought the

16:32:08 1   business, and for them to say that they are -- that
16:32:09 2   they retained it was just not -- did not make any
16:32:09 3   sense to me, and I was just surprised.
16:32:11 4   Of course, I was not involved in any of
16:32:14 5   the businesses. There was nothing for me to do.
16:32:19 6   Q.   Did anyone from Novell ever say to you,
16:32:20 7   prior to the execution of the APA, that Novell
16:32:23 8   intended to retain any Unix or UnixWare copyrights?
16:32:24 9   A.   No.
16:32:27 10  Q.   Did anyone from Santa Cruz ever say to
16:32:29 11  you, prior to the execution of the APA, that they
16:32:32 12  understood that Novell intended to retain any of
16:32:33 13  the Unix or UnixWare copyrights?
16:32:35 14  A.   No.
16:32:38 15  Q.   You say in paragraph 6 of your
16:32:40 16  declaration, quote:
16:32:42 17  In approximately early April 1996, it
came to my attention that Novell,
purportedly on behalf of itself and Santa
Cruz, was planning to enter into an
agreement with IBM purportedly amending
its UNIX license agreements by granting
IBM a buy-out of its binary royalty
obligations and expanding its source code
rights, end quote.

16:33:19 8   Q.   Did anyone from Novell ever say to,
16:33:20 9   at any time in 1996, that they believed Novell had
16:33:23 10  retained any Unix or UnixWare copyrights under the APA?
16:33:24 12  THE WITNESS:  No, I don't recall that.
16:33:25 13  BY MR. NORMAND:
16:33:27 14  Q.   Did anyone from Santa Cruz, including
16:33:29 15  Santa Cruz's outside counsel, ever say to you, at
16:33:30 16  any time in 1996, that they believed Novell had
16:33:32 17  retained any Unix or UnixWare copyrights?
16:33:33 18  A.   I --
16:33:35 19  MR. BRAKEBILL:  Form.
16:33:36 20  THE WITNESS:  I don't recall that.
16:33:37 21  BY MR. NORMAND:
16:33:39 22  Q.   You say in the second sentence of
paragraph 6 of your declaration, quote:
I promptly contacted Novell and
communicated Santa Cruz's view that
Novell lacked the authority under the APA
to enter in such agreements and that they
ran counter to the intent of the APA.
Over the next several weeks, I gained
Novell's assurances that the purported
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,  )
( Plaintiff/           ) Case No. 2:04CV-00139
Counterclaim Defendant,)

NOVELL, INC.,        )
( Defendant/          )

Counterclaim Plaintiff.)

Videotaped Deposition of:
ROBERT J. FRANKENBERG

February 10, 2007
10:00 a.m.

Fillmore & Spencer
3301 N. University avenue
Provo, UT 84604

Sharon Morgan, CSR, RPR, CRR
Notary Public in and for the State of Utah
Job: 191635

Esquire Deposition Services
1-800-944-9454
A. The NetWare business, as I said, was the largest single business. It provided the ability to connect personal computers to shared resources such as disks and printers and also, through those shared resources, to connect to other networks.

Q. Did there come a --
A. It also provided the capability to write applications on that shared resource and make further use of it.

Q. Did there come a time when you decided, as CEO of the board, to explore divesting certain of the business lines of the company?
A. Excuse me, I misspoke. At about the same --

Q. -- of the same name?
A. Correct.

Q. -- of the same name?
A. Uh-huh (affirmative).

Q. And did there come a time after you became CEO when you decided it would be in the best interest of Novell to sell one or more of these businesses?
A. Yes.

Q. Approximately when did you come to that view?
A. That would have been late in '94 to early in '95.

Q. Can you recall your thinking as to why that would be advantageous?
A. Well, there were several reasons. One, after a very thorough study, we looked at the range of businesses that we were trying to advance and came to the conclusion that we weren't able to fund appropriately all of those businesses. And as such, it made sense to get out of some of them or sell them and concentrate our efforts on the ones that we thought would be the most successful or the ones that we thought we could have the greatest success with, having moved the responsibility for some of the others elsewhere.

Q. Were there particular businesses that fell in the category of those that you wanted to sell?
A. Yes.

Q. Which were those?
A. The WordPerfect word processing software, and the associated office product that we called Perfect Office.
Q. Did you ever hear from anyone at Novell that copyrights were not being sold?
A. Yes.
Q. Now, I would like to briefly look at the other assets which were being sold on Schedule 1.1(a).
A. Yes.
Q. Is it your understanding that to the extent there were contracts involving source code that had been entered into by AT&T and IBM that pertain to UNIX technology, that that was part of all of the seller's rights which were being sold to Santa Cruz in this transaction?
A. Yes. It was very important that we be clear that NetWare was not being transferred as part of the transaction.
Q. If you now look at V under Intellectual Properties where it says, as part of the assets not being transferred, "All copyrights and trademarks, except for the trademarks UNIX and UnixWare," would you understand that to be a reference to Novell not transferring its own copyrights and trademarks with respect to NetWare products?
A. No.

Is that, Mr. Frankenberg, an accurate statement in your understanding of the intent of the deal?
A. Yes.
Q. If we turn now -- now turn to Schedule 1.1(a), which appears after page 49, I would like to direct your attention to the very first Roman numeral item on this list of the assets, which you'll recall as the assets being sold. It states that "All rights and ownership of UNIX and UnixWare, including but not limited to all versions of UNIX and UnixWare and all copies of UNIX and UnixWare (including revisions and updates in process), and all technical, design, development, installation, operation and maintenance information concerning UNIX and UnixWare, including source codes, source documentation, source listings and annotations, appropriate engineering notebooks, test data and test results, as well as all reference manuals and support materials normally distributed by seller to end users and potential end users in connection with the distribution of UNIX and UnixWare, such assets to include without limitation the following," and it lists a variety of different technologies. Is that statement consistent with your understanding of the intent of this transaction?
A. Yes.
<table>
<thead>
<tr>
<th>Q.</th>
<th>Take a moment and look at this press release, and my first question to you is whether you recognize this to be the jointly approved press release pertaining to that transaction?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Yes, it is.</td>
</tr>
<tr>
<td>Q.</td>
<td>If you turn to page 2 of the press release, at the top of the page there's a quote attributed to you which says, &quot;SCO's Business Critical Server focus and worldwide distribution channel makes them an ideal partner for taking UNIX application servers forward on the Intel platform. By focusing on our areas of expertise and working to integrate our technologies, Novell and SCO together will meet the server needs of customers in a networked world.&quot; Is that a direct quote that you made at the time?</td>
</tr>
<tr>
<td>A.</td>
<td>It is, yes.</td>
</tr>
<tr>
<td>Q.</td>
<td>Right below that it states that &quot;According to the terms of the agreement, SCO will acquire Novell's UnixWare business and UNIX intellectual property.&quot; Is that also consistent with your understanding of the transaction?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Q.</td>
<td>And is it consistent with your understanding that all right, title and interest, including the copyrights for UNIX and UnixWare were so transferred?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Q.</td>
<td>I would like to show you a Wall Street Journal article that appeared after the transaction, which we'll mark as the next exhibit.</td>
</tr>
<tr>
<td>MR. GONZALEZ:</td>
<td>This has been previously marked as 1030.</td>
</tr>
<tr>
<td>Q.</td>
<td>(By Mr. Singer) Mr. Frankenberg, Exhibit 1030 appears to be an excerpt -- or a copy of an article that appeared in The Wall Street Journal on September 20, 1995 under the title &quot;Novell to Cede Control of UNIX To 2 Companies.&quot; If you could take a moment to look at this, I have just a couple of questions. Does this summary of the transaction, including specifically the statement on page -- in paragraph two, &quot;The deal includes the purchase by Santa Cruz Operation of most trademarks and intellectual property associated with UNIX software&quot; appear accurate to you?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes, it does.</td>
</tr>
<tr>
<td>Q.</td>
<td>I would like to show you a Technology Licensing Agreement that was entered into in December of 1995.</td>
</tr>
<tr>
<td>MR. GONZALEZ:</td>
<td>This one has been previously marked as 1008.</td>
</tr>
<tr>
<td>Q.</td>
<td>(By Mr. Singer) Do you recall, Mr. Frankenberg, under the terms of the asset purchase agreement, Novell and Santa Cruz were to agree upon and issue a joint press release concerning a transaction?</td>
</tr>
<tr>
<td>A.</td>
<td>Yes.</td>
</tr>
</tbody>
</table>
competitor to Microsoft. I remember that being part of the charge and I remember reminding Mr. Thompson about that. And we wanted to make sure Intel was supportive of what we came up with.

Q. In connection with the Intel discussions that you had around the time of the Asset Purchase Agreement, do you remember any input Intel gave you about things that Intel thought would be important in the transaction that you were about to enter into with SCO?

A. Not specifically. I'm sure we talked about a number of things, but I can't cite you a very specific this is what Intel told me was important right now, but I'm sure we talked about that.

Q. Do you recall who your counterpart was at Intel on those discussions?

A. Yeah, Dave Howse.

Q. What was his position?

A. Dave was a senior vice president, if I remember right, at least a vice president if not a senior vice president, and deeply involved in marketing and selling of processors.

Q. Just give me a minute.

MR. JACOBS: No further questions, sir.

Thank you very much.

BY MR. SINGER:

Q. Mr. Frankenberg, I do have some redirect. Do you recall being asked in cross-examination some questions about the intent of the transaction?

A. Uh-huh (affirmative).

Q. And the initial intent of the transaction?

A. Yes.

Q. I just want to be clear on a few things. Was your initial intent in the transaction that Novell would transfer copyrights to UNIX and UnixWare technology to Santa Cruz?

A. Yes.

Q. Was that your intent at the time when the APA was signed?

A. Yes.

Q. Was it your intent when that transaction closed?

A. Yes.

Q. And did that remain your intent, as you view it, at all relevant times?

A. Yes.

Q. So that never changed?

A. No.

FURTHER EXAMINATION

BY MR. SINGER:

Q. Would you have expected that if the lawyers or any other party to the negotiating team on behalf of Novell was going to seek to change a deal point like that, that they would have told you about it rather than just go off and do it?

A. Yes.

Q. And that never happened, did it?

A. Not that I recall.

Q. Now, there's been some questioning about the exact scope of the rights regarding Section 4.16 over which Novell had a continued interest. Do you recall those questions?

A. Yes.

Q. And do you recall testifying in questions I asked you on direct that what Novell was retaining when it's referring to SVRX licenses was a continuing right to retain a binary royalty stream that was in place at the time of the transaction. Do you recall that?

A. I do.

Q. Then there was some questions by Mr. Jacobs directed at whether or not in the course of a buyout there would be some need to deal with source code rights. Do you recall questions there?

A. I do, yes.

Q. Would you agree that Mr. Chatlos was one of the individuals specifically -- in fact, the individual specifically charged with negotiating the agreement from a business standpoint?

A. With SCO?

Q. Yes.

A. Yes.

Q. I would like to show you a declaration Mr. Chatlos has executed and which has previously been provided to counsel to Novell in this litigation, which we would like to mark as the next exhibit.

MR. GONZALEZ: This will be marked as Exhibit 1045.

(Exhibit No. 1045 marked.)

Q. (By Mr. Singer) Could you take a moment to review Mr. Chatlos' declaration.

A. Okay.

Q. Have you had a chance to review Mr. Chatlos' declaration?

A. Yes.

Q. I would like to ask you about certain passages. If we turn to 4 of Mr. Chatlos' declaration, he states, "Novell's intent and agreement under the APA and Amendment No. 1 was to transfer the entire UNIX business, including the UNIX source code..."
EXHIBIT 8
Press Release

SCO

400 Freedom Street
PO Box 1900
Santa Cruz, California 95061-1900
408-427-7222

FOR IMMEDIATE RELEASE

CONTACT:

Jeff Finn
The Santa Cruz Operation, Inc.
TEL: 408/427-7671
FAX: 408/427-7319

SCO ACQUIRES UNIX BUSINESS FROM NOVELL
AND LICENSES NETWARE TECHNOLOGY

- Novell Takes 17% Equity Position in SCO

NEW YORK, NY (September 20, 1995) – The Santa Cruz Operation, Inc. (NASDAQ: SCOC) and Novell, Inc. (NASDAQ: NOVL) today announced a definitive agreement for SCO to purchase the UNIX business from Novell. Under the agreement, Novell will receive approximately 6.1 million shares of SCO common stock, resulting in an ownership position of approximately 17% (post transaction) of the outstanding SCO capital stock. SCO will also license Novell’s NetWare Directory Services and other NetWare 4 technologies as the basis for future networking services. SCO plans to merge the SCO OpenServer Release 5 and NetWare 2 product lines to create a standard high-volume UNIX operating system that contains integrated NetWare networking services, and expects to release this merged product in 1997.

Alok Mohan, president and CEO of SCO, said, “This extends SCO’s leadership position in the Business Critical Server market. Our customers and resellers not only get a powerful UNIX operating system, but also the most advanced network services in the world. Novell’s advanced network services, such as NetWare Directory Services, are setting the standard for business networking. Our customers will be able to integrate their Business Critical Servers with their existing workgroups to provide their people with greater access to corporate data.”

(More)
SCO Acquires UNIX Business From Novell and Licenses NetWare Technology

"SCO's Business Critical Server focus and worldwide distribution channel makes them an ideal partner for taking UNIX application servers forward on the Intel platform," said Robert J. Frankenberg, chairman and CEO of Novell. By focusing on our areas of expertise, and working to integrate our technologies, Novell and SCO together will meet the application server needs of customers in a networked world."

According to the terms of the agreement, SCO will acquire Novell's UnixWare business and UNIX intellectual property. In order to meet customer support needs and protect development requirements, SCO intends to hire a number of Novell employees. In addition to the SCO stock, Novell will receive a revenue stream back from SCO based on revenue performance of the purchased UNIX business. This revenue stream will end in the year 2002 and is not to exceed $84 million net present value.

SCO and Novell expect the agreement to close on or about December 1, 1995, conditional upon several items including U.S. government approval under the Hart-Scott-Rodino Act. Shareholder approval is not required by either party.

SCO has outlined a product roadmap in which both SCO OpenServer and UnixWare will initially continue to be individually supported and enhanced. Upcoming releases include enhanced SCO OpenServer and UnixWare products, containing integrated NetWare services, in the first half of 1996. In the summer of 1996, SCO expects to release a beta version of the product that merges SCO OpenServer and UnixWare, with a complete software migration toolkit. This beta kit will enable developers to begin developing their applications to a single merged product line that contains the best capabilities of both environments. SCO expects to release the final version of this merged product, containing integrated NetWare services, in 1997. The merged product will offer binary compatibility with existing SCO OpenServer and UnixWare applications, as well as a full set of migration tools to ensure that developers can easily develop for the new line from either predecessor.

(More)
SCO Acquires UNIX Business from Novell and Licenses NetWare Technology

SCO will continue to offer UnixWare source code to existing and new OEM licensees worldwide. Existing Certified Novell Engineers (CNEs) for UnixWare are fully certified to support UnixWare products from SCO.

In order to smooth the transition for existing customers of SCO OpenServer and UnixWare to the future merged product, SCO plans to offer a number of enhancements to the product lines over the coming months. These include UNIX 95 compliance, NetWare file, print, and directory services, and tools that allow software developers to quickly create a single binary that will run on SCO OpenServer Release 5, UnixWare 2, and the next-generation merged operating system.

SCO is the world's leader for UNIX System servers and multiuser hosts. SCO Business Critical Servers run the critical, day-to-day operations of large branch organizations in retail, finance, and government, as well as corporate departments and small to medium-sized businesses of every kind. SCO is also a leading supplier of client integration software that integrates Windows PCs and other clients with UNIX servers from all of the major vendors. SCO sells and supports its products through a worldwide network of distributors, resellers, systems integrators, and OEMs.

The business of Novell, Inc. is connecting people with other people and the information they need, enabling them to act on it anytime, anywhere. Novell is the world's leading network software provider. The company's software products provide the distributed infrastructure, network services, advanced network access and network applications required to make networked information and computing an integral part of everyone's daily life.

# # #

SCO, The Santa Cruz Operation, the SCO logo, and SCO OpenServer are registered trademarks of The Santa Cruz Operation, Inc. in the USA and other countries. NetWare and UnixWare are registered trademarks of Novell, Inc. UNIX is a registered trademark in the US and other countries, licensed exclusively through X/Open Company Limited. All other brand or product names are or may be trademarks of, and are used to identify products or services of, their respective owners.
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC., : Case No. 2:04CV00139
    Plaintiff,

vs.                        : Videotaped Deposition of:

NOVELL, INC.,         : TY MATTINGLY
    Defendant.

January 19, 2007 - 9:23 a.m.

Location: SCO Group
355 South 520 West
Lindon, Utah 84042

Reporter: Teri Hansen Cronenwett
Certified Realtime Reporter, Registered Merit Reporter
Notary Public in and for the State of Utah

Esquire Deposition Services
1-800-944-9454
Q. Uh-huh. I think you said you joined as senior product manager. When did your title change? What did it change to?
A. I think the first change in it was probably a year later when Ray Noorda basically hired me to work directly for him, and Ray Noorda was the then chairman and CEO and founder of Novell.

Q. In what capacity did he hire you to work for him?
A. Title was executive director, office of the chairman.

Q. What were your responsibilities?
A. To be his right-hand man and gopher and bodyguard and --

Q. Okay. How long did you hold that title?
A. I probably worked for Ray for about two years.

Q. Okay. And what was your next title at Novell?
A. Basically kept the same title, and then when Ray retired, I worked in that same capacity for Bob Frankenberg.

Q. Uh-huh.
A. Who was his successor.

Q. And until what time did you do that?
A. I probably worked for Bob for maybe 18 months.

Q. So it started at some point in 1995, your responsibilities for Mr. Frankenberg?
A. Yeah, probably about 18 months.

Q. And when was that time?
A. Well, let me think about that. It was probably a few months before we actually completed the divestiture to SCO, so I think that would have been about the '95 time frame.

Q. And what were your responsibilities with SBI Consulting?
A. It was SBI Razorfish, R-A-Z-O-R-F-I-S-H.

Q. And where did you work for him?
A. We started a consulting company. I knew that I did not like hardware from my IBM days and did not like software from my Novell days, and so thought I would get into the consulting where we just talked about both of those things.

And we started an Internet consulting firm right when the Internet was all of the rage in about '98. And basically myself and a couple of others founded that company, and we built it and sold it in 2004.

Q. What was the name of that company?
A. It was SBI Razorfish, R-A-Z-O-R-F-I-S-H.

Q. And what were your responsibilities with SBI Razorfish?
A. Corporate development.

Q. And those ended in 2004?
A. Yes.

Q. How about since 2004?
A. I have just been doing a consulting, personal consulting gigs and personal investing.

Q. Okay. Were you involved with Novell's acquisition of the Unix business?
A. I was not involved in the acquisition, but when Novell bought Unix Systems Labs from AT&T, that was one of the key reasons why I decided to join Novell because of the application environment and the business applications that ran on Unix that I believed would now be merged into NetWare.

Q. Do you know why Novell acquired USL?
A. I believe it was for the same reason. Ray Noorda had a vision of getting an application development environment inside of NetWare that he knew we needed to have in order to be competitive with Microsoft.

Q. Did there come a time during your tenure at Novell when you learned that Novell was interested in selling some or all of its Unix business?
A. Yes.

Q. And when was that time?
A. Well, let me think about that. It was probably a few months before we actually completed the divestiture to SCO, so I think that would have been about the '95 time.
A. I just told him about the deal, that we were divesting of the Unix business to SCO and gave him specifics as to why.

Q. And do you recall what he said or how he reacted?
A. I don't. It was a very cordial call, and he's a very nice guy, and that's basically it. That's the only one I can really remember, but I'm sure we had calls with all of the other people because there were about, I think, 13 partners that we really tried to work with.

Q. Okay. I take it that the negotiations we have been discussing resulted in an asset purchase agreement?
A. That's correct.
Q. I'm going to mark this as an exhibit just to get it in.

(Deposition Exhibit No. 1 was marked.)

Q. (By Mr. Normand) I am handing you, Mr. Mattingly, the -- a document titled asset purchase agreement by and between the Santa Cruz Operation Inc. and Novell Inc.
A. Uh-huh.
Q. Dated as of September 19th, 1995. I take it you have seen this document before?
A. Many moons ago.
Q. Okay. When was the last time you saw this document?
A. Probably -- this was dated on the 19th. It

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Q. Okay. When was the last time you saw this document?
A. Probably -- this was dated on the 19th. It
| Q. And what is your view? |
|---|---|
| A. Well, my firm belief is that we sold the Unix business to SCO, and that is why SCO paid us roughly 125 million dollars at that point because they bought the Unix business from us basically in its entirety. |
| The only things that did not go with that was a kind of an agent relationship whereby SCO was collecting the SVRX royalties from existing OEMs at the time we sold that business and then giving the bulk of those moneys back to Novell. So that piece of the business, if you will, Novell maintained the royalty stream base of that going forward, and SCO acted as Novell's agent there for a very good reason. |
| And that is that SCO wanted to create the relationships with those OEMs and move them from those existing licenses to their new UnixWare platform on X-86. That was basically the strategy that we wanted, and that was a rational approach for them to actually begin to create the relationships, associations, ties with those OEMs that they aspired to move. And we wanted them to move those OEM relationships over to UnixWare. |
| Q. Why did you want them to do that? |
| A. Well, remember the strategy. The strategy was about how do we set up an alternative application platform out there in the industry that all of the -- what were existing minicomputer, microcomputer, mid-range computer RISC architecture, that would move to this unified Unix that would run on the new Intel X-86 architecture. |
| So the idea is, if you can create a platform there so that now as an ISV -- so strategically, Microsoft's big strength in the industry is, they have this ISV control. And that means that these independent software vendors that write business applications that solve business problems run on NT. And they secured more of those people on their platform by, I don't know, a hundred X or more than what Novell did. |
| So the whole strategy here is, how do you take and create this alternative platform so that ISVs will say, gosh, if I write for UnixWare, now HP, Sun, IBM, et al., I'll be able to sell my applications into those environments, and it will run on every one of those vendors' platforms that run on Intel architecture. |
| So the strategy there, I think, is really important to understand because that's what drove all of our decisions. And quite honestly that was my value-add in this negotiation is, is everything we're doing consistent with that strategy. I am not the guy that then or even today that is the detail guy that gets down into all of the nuts and bolts and looks at all of the fine language inside of this nice, thick document. |
| Q. Would it be fair to say that the transfer of the Unix copyrights to SCO was consistent with your view of this overall strategy? |
sale of UnixWare technology as more fully set forth in the
asset purchase agreement. So that seems to be consistent.
Q. Okay. In that same paragraph there's a reference
in the preceding sentence to 95 percent of the SVRX
royalties. Do you see that phrasing?
A. Uh-huh, uh-huh.
Q. What did you understand that to mean?
A. Well, at the time we sold the business, Novell had
a number of existing SVRX OEMs that were predominantly these
minicomputer OEMs.
Q. Yeah.
A. And with respect to those people, and I guess you
can see down below who the big ones must have been, because
we had this right of first refusal on Sun Microsystems,
Microsoft, Hewlett-Packard, IBM, Digital and Fujitsu, so
those likely were some of the big licensees.
And the intent there was to, you know, is for SCO
to collect all of those existing SVRX royalty streams and
then pay Novell 95 percent of that and keep 5 percent as an
administrative fee.
Q. The minutes say that -- I'm looking now back at
page 1 at the end of the last paragraph on page 1. The
minutes say that you answered questions from the board. Do
you recall any of the questions?
A. You know, I don't. But I mean, as usual, I mean,